The Incorporated Accountants' Journal

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Letters for the Editors to be forwarded to them, care of the Secretary, as above. Correspondence, copies of reports and accounts, &c., will be welcomed from the profession.

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Contents.

Professional Notes.

LAST month we published the new clauses of the Finance Bill, which the Chancellor of the Exchequer had given notice to move on the Committee stage, embodying his revised scheme of National Defence Contribution. In passing through Committee several amendments and additions were made to this revised scheme, which in its final form is now included in the Finance Act which we publish in another part of this issue. The following is the substance of the more important amendments and additions: Section 19 provides that the National Defence Contribution shall not apply to the British Broadcasting Corporation. Section 22 contains provisions as to subsidiary companies, including the definition of what constitutes a subsidiary, namely, that not less than nine-tenths of its ordinary share capital is beneficially owned by the holding company. Section 23 makes special provision as to Building Societies, the general effect of which is that these societies are to be assessed at the rate of 1½ per cent. only, but without allowing any deduction for interest paid on money borrowed from members or depositors.

A number of alterations are also embodied in the Fourth Schedule to the Act, which adapts the Income Tax provisions to the computation of the National Defence Contribution profits. Clause 5 of this Schedule provides that Section 27 (4) of the Finance Act, 1920, which disallows deductions on account of the payment of Dominion Income Tax shall not apply. Clause 6 contains special provisions relating to Shipping, Air Transport and certain agencies which have been granted relief from double taxation. Clause 8 deals with certain exemptions applicable to Friendly Societies, Trade Unions, Savings Banks and Charities.

Clause 11 of the Fourth Schedule, which relates to directors' remuneration, is somewhat modified. As drafted for the revised scheme it provided that in a company where the directors had a controlling interest the deduction to be allowed in respect of directors' remuneration should not exceed 15 per cent. of the profits or £1,500, whichever was the greater, with a proviso that the deduction should in no case exceed £15,000. The amendment which has been made allows the remuneration of "whole-time service directors" as a deduction, and a "whole-time service director" is defined as one who is required to devote substantially the whole of his time to the service of his company in a managerial or technical capacity and is not the beneficial owner of more than 5 per cent. of the ordinary shares. Clause 12 is a new clause giving an option to an individual or a partnership to be assessed at the 4 per cent. rate in the normal way, or to claim to be assessed at the 5 per cent. rate on the same basis as a controlled company and to be allowed as a deduction the greatest amount which could

have been allowed as remuneration of directors other than whole time service directors, in the case of a company the directors of which had a controlling interest therein.

Apart from the National Defence Contribution provisions, some amendments have been made in other parts of the Finance Bill when passing through committee. One of these is the introduction of a new section relating to claims under Section 34 of the Income Tax Act, 1918. Hitherto it has been the practice of the Inland Revenue to refuse to entertain any Section 34 claim unless there was an actual loss shown on the Profit and Loss Account, although there might be a loss after the normal adjustments for Income Tax purposes were made. Section 13 now provides that the loss in such cases shall be computed " in like manner as the profits or gains accruing from the trade are computed under the rules applicable to Case I of Schedule D." In other words, it is to be the adjusted loss.

The wording of Section 15, which relates to allowances for depreciation of mills, factories, etc., is slightly altered and Sub-Section (5) has been added which provides that a person occupying the premises as tenant shall be treated as if he were the owner if, under his lease or agreement, the whole burden of depreciation of the premises falls upon him.

Section 18 is a new section providing that a discount on tax paid in advance under Schedule D may be obtained if applied for within one month of the date of payment. Hitherto it has been necessary to make the claim when the payment was made. The rate, however, is only 2½ per cent. per annum and does not. therefore, offer any great inducement to the taxpayer.

In reply to a question in the House of Commons last month the Chancellor of the Exchequer stated that considerable progress had been made with the examination of the proposals of the Income Tax Codification Committee, but that he was not yet able to indicate when it might be possible to introduce legislation.

A company which had guaranteed that the dividends of another company should not be less than 7½ per cent. less tax for a period of five years was called upon to pay half the amount necessary to make up the dividends to the proper percentage. These payments were admitted as necessary trade expenses in computing the company's profits for Income Tax purposes, but the company contended that the payments were not annual payments (under General Rule 21) from which Tax was deductible and an account of which had to be rendered to the Inland Revenue. The Special Commissioners did not agree with this contention and the Court of Session, on a case stated, upheld the Commissioners' view. The company carried the matter to the House of Lords, but their appeal has again been dismissed. Their Lordships were of opinion that the fact that the payments were contingent and variable in amount did not affect the character of the payments which were annual payments payable as a personal obligation by virtue of a contract and taxable under Case III of Schedule D.

Lord Macmillan delivered the judgment of the Court in which the other members of the Court concurred, but Lord Maugham added some observations of his own, in the course of which he said : " It is, I think, to be noted that we are not concerned here with the case of annual profits or gains arising from a trade, as to which the decision in Martin *v.* Lowry would be decisive to show that in that context " annual " means " in any one year." In Rule 21 " annual " must be taken to have, like interest on money or an annuity, the quality of being recurrent or being capable of recurrence. The payments we are concerned with were to continue for five years, subject to their being required to make up the guaranteed annual dividend, and were plainly payments intended to supplement, so far as necessary, the income of the recipients during each of the years in question. In these circumstances, I am of opinion that they had the necessary quality of recurrence and are within the terms of Rule 21." The case was ***Moss Empires Limited*** v. ***Inland Revenue Commissioners.***

Last week five law lords were engaged in hearing an appeal in the case of ***Strood Estates Company, Limited*** v. ***Gregory,*** which involved a question of 4d. a week on the rent of a cottage occupied by a labourer. The point at issue, however, was more important than might at first appear. It related to the fixing of the net rent for the purpose of the Rent Restriction Acts in cases where landlords of small properties arrange to compound the rates and receive a discount by paying direct to the assessment authority. The point which their Lordships had to decide was whether in order to arrive at the net rent under the Rent Restriction Acts there should be deducted from the standard rent (*a*) the amount actually paid by the landlord to the local authority, or (*b*) the amount which the occupier would have had to pay if he had himself had to pay the rates, the former being a smaller amount on account of the discount above referred to. The importance of this question arises by reason

of the right of the landlord to increase the rent to a figure 40 per cent. above the net rent payable in August, 1914. It is obvious that the higher the rent in 1914 the greater the increase would be.

The County Court Judge decided that the compounded rates only should be deducted in arriving at the net rent, but the Court of Appeal held that the sum to be deducted from the standard rent in order to arrive at the net rent was the amount which would have been chargeable on the occupier had the rates been paid by him direct. This view has now been confirmed by the House of Lords. Lord Macmillan, in delivering judgment, said the "net rent" was to be the standard rent less the amount of rates chargeable on the occupier, or which would be chargeable on him but for the provisions of any Act. In his opinion it was the occupier's rates which had to be deducted, not the rates assessed on the landlord or accepted by the local authority from the landlord in discharge of the rates. What was to be deducted was that which the occupier was or would have been (but for special legislation) liable in law to pay, not what the landlord in fact paid or was liable to pay in place of the occupier.

In our Professional Notes of June last we referred to a demand for a poll at the annual meeting of the Institute of Chartered Accountants in relation to the passing of the annual accounts of the Institute. The objection had reference to a sum of £3,500 shown in the accounts as allowances to Provincial Societies and the London Students' Society for tuition. Mr. E. Miles Taylor, by whom the objection was raised, contended that the poll was irregularly taken and applied in the Chancery Court for an injunction. On the morning of the 8th of June, the day on which the adjourned meeting was held, an interim injunction was granted by Mr. Justice Bennett on the ground that the time allowed for the return of the voting papers was a day too short. The Voting at the meeting, as reported by the scrutineers, was for Mr. Miles Taylor's amendment 1368 votes, against 2571.

The case then came before the Court of Appeal, both parties to the action having agreed that the hearing of the appeal should be treated as the trial of the action. The result was that the Appeal Court, following the rule in *Foss* v. *Harbottle*, held that it was not competent for an individual member of the Institute to sustain an action against it on a matter concerning its internal policy. In the course of his judgment the Master of the Rolls said: "I cannot imagine any matter which is more a matter of the internal administration of a corporation than . . . the approval or non-approval of the Institute's accounts. . . . Now it is perfectly well settled that when a wrong has been done to a corporation, be it a corporation established by Charter, or a company incorporated under the Companies Acts, *prima facie* it is for the corporation, and the corporation alone, to complain of that wrong and an action by anybody but the corporation is incompetent." A full report of the Court of Appeal judgment appears in another part of this issue.

The Autumnal Meeting of the Institute of Chartered Accountants will be held at Liverpool on October 5th, 6th and 7th. On the opening day the Members will be welcomed at the Town Hall by the Lord Mayor, Alderman William Denton, F.C.A. after which the President of the Institute, Mr. F. Lindsay Fisher, C.B.E., will deliver an address. A Paper will subsequently be read by Mr. H. M. Barton, F.C.A., on "Pitfalls in the Path of a Professional Accountant," and another by Mr. F. Cook, F.C.A., Vice President of the Liverpool District Society, on "Cotton Importing and Finance." There will also be a reception by the Lord Mayor and Lady Mayoress in the Town Hall.

At the Meeting of the International Rubber Regulation Committee held last month no alteration was made in the exportable quotas of rubber which therefore remain at 90 per cent. for the second half of the year. The quota for the first quarter of 1937 was 75 per cent. and for the second quarter 80 per cent. The average for the year will therefore be 83¾ per cent. as compared with 62½ per cent. for 1936.

There has been introduced on behalf of the Government a Bill entitled "The National Health Insurance (Juvenile Contributors and Young Persons) Bill" which provides that medical benefit shall be given to all boys and girls who leave school and take up insurable employment before reaching 16 years of age. The object is to bridge the gap as regards medical supervision which at present exists between the school medical services and the commencement of insurance under the National Health Insurance Act. The contribution is to be at the rate of 4d. a week divided equally between the juvenile and the employer, the State contributing the same proportion of the cost as under the main Health Insurance Scheme. This contribution is one-seventh in the case of boys and one-fifth in the case of girls.

THE MINISTRY OF LABOUR COST OF LIVING FIGURE.

[CONTRIBUTED.]

THERE can be little doubt that the cost of living is rising, and various speculations are being made as to the extent of the rise. So far as the urban working class population is concerned, some indication of the amount of increase is afforded by the Ministry of Labour cost-of-living figure. The method of calculating this figure illustrates a number of statistical principles, and is therefore of some interest. This interest is enhanced by the fact that a committee has been appointed to review the method of compiling the figure and to suggest any alterations deemed necessary. The report of this committee should be available in the near future.

The Ministry of Labour, in calculating the cost-of-living figure, attempts to estimate the increased cost of the goods and services usually required by the working classes over the 1914 costs. To do this, the prices ruling, at any given date, of the goods and services normally bought by working-class families are compared with prices existing in July, 1914. Thus, the cost-of-living figure for March 1st, 1937, was given as 51, which means that the average estimated cost of maintaining the pre-war standard of living of the class to which the figure refers was 51 per cent. higher on March 1st, 1937, than in July, 1914. In arriving at this figure the same quantities, and, as far as possible, the same qualities, of each item are taken as in 1914.

An investigation undertaken some time previous to the War had revealed the main characteristics of working class expenditure. Thus, it was found that, out of an average weekly income of 36s. 10d., 22s. 6d. was spent on food, 5s. 9d. on rent and rates, 4s. 9d. on clothing, 2s. 10d. on fuel and light, and 1s. on other items. Expressed as proportions, these figures work out as $7\frac{1}{2}$, 2, $1\frac{1}{2}$, 1 and $\frac{1}{2}$ respectively. These relative proportions, called "weights," are still kept in the calculation of the final figure. The investigation showed also the normal expenditure on the items included in each of the five groups, mentioned above.

Food.—Taking the food group as an example, the following items are those considered in the calculation of the index for food: beef, mutton, bacon, fish, flour, bread, tea, sugar, milk, butter, cheese, margarine, eggs, and potatoes. It will be seen that, although these do not represent the entire expenditure on food in pre-war days, they form a very representative group, and the remaining expenditure on food would not materially affect the result. The pre-war investigation revealed the proportions spent on each of these items of food, and the relative weights used in the calculation of the food index. The calculation takes the form of finding the percentage increase (or decrease) in the price of each of the specified items for the month under review over the July, 1914, prices, weighting these percentages and obtaining a weighted mean, which gives the average percentage increase in the cost of food.

In calculating the percentage of increase or decrease in prices, returns from 509 towns and from over 5,000 retailers of all kinds are considered, and the percentage of increase or decrease adopted represents the average of all these returns.

Rent and Rates.—Returns for both controlled and uncontrolled dwelling-houses and for rates payable are made to the Ministry by local authorities and property owners' associations, and the figure used as the index for rent and rates represents the average percentage increase over pre-war days.

Clothing.—The figure for clothing is based on percentage increases or decreases in the retail prices of men's suits and overcoats, all kinds of woollen and cotton materials, underclothing, hosiery, boots and shoes. These various lines of expenditure are weighted in a similar manner to those in the food group, and returns of prices are collected from 300 representative outfitters in 80 towns.

Fuel and Light.—The items in this group include coal, gas, oil, candles and matches, and a system of weighting is again applied.

Other Items.—These include soap, soda, domestic ironmongery, tobacco, fares and newspapers, and these items are given weights proportional to their importance in the scheme of working-class expenditure.

The Final Figure.—Having obtained figures representing the percentage increases for each of the five groups, as indicated above, the figure for each is multiplied by the weight assigned to it and the total obtained divided by the total of the weights. For example, on March 1st, 1937, food showed an increase of 35 per cent., rent and rates 59 per cent., clothing 95 per cent., fuel and light 90 per cent., other items 70 per cent., over 1914 prices.

The final cost of living figure then is—

$$\frac{(35\times 7\frac{1}{2})+(59\times 2)+(95\times 1\frac{1}{2})+(90\times 1)+(70\times \frac{1}{2})}{12\frac{1}{2}}$$

$$=\frac{648}{12\frac{1}{2}}=51,$$ approximately (being the figure quoted for March 1st).

It will be seen that the basis of the index is the relative expenditure along the different lines that constituted the average working-class budget shortly before the War. One or two criticisms might be levelled against the method of compilation of the figure: First, that since the War increasing quantities of fruit and packet foods, for which no provision is made in the calculation, are being consumed by the working classes. Second, that the weights assigned to each group, although correct for pre-war days, are not so now. For instance, it might be thought that rent and rates are not given sufficient weight in the final figure. Respecting the first criticism, it may be observed that, if the price of an omitted item has risen by about the same amount as the included items, neither its omission nor its inclusion would affect the final figure. It is probably true also that the fruit and packet foods have increased in price to much the same extent as other foods. With regard to the second criticism, it will be noted that the percentage increases in the separate indices for rent and rates, fuel and light, and other items are greater

than that of the final figure, and this has the same effect as an increase in the weights assigned to these groups. No criticism whatever can be made on the ground that the prices taken are not sufficiently representative.

The cost-of-living figure worked out for the urban working-class population cannot, of course, be applied with anything like the same degree of certainty to other classes of the community, who apply different proportions of their incomes along the various lines of expenditure. Investigations seem to show that in the case of the middle classes less than 40 per cent. of the income is spent on food, as against 60 per cent. in the case of the working classes. Rent and rates take up about the same proportions of income in both cases, but clothing and "other items" take up a much greater proportion of the middle class income than they do of the working-class income. Since the food index is lower than the general index it would seem that the cost-of-living index for middle-class families is higher than the one computed for the working class.

The final index is subject to seasonal variations, and it is usually higher in winter than in summer. Since the War the highest figure quoted was 176 in November, 1920. From that date it fell very rapidly to 80 at the end of 1922. Thereafter there was a downward tendency until the middle of 1933, when the figure was 36, but the decline from 1931 to 1933 was more rapid than in the period from 1923 to 1931. Since the middle of 1933 the tendency has generally been upwards. For May 1st the figure was 52; for the six months previous to this date it was quoted as 51.

PRIME COST

[CONTRIBUTED.]

THROUGHOUT the whole of the newspaper press of the country, as well as through the columns of technical and professional journals, the question of manufacturing costs and cognate matters has received a great deal of attention during the past few weeks. Behind all this there lies a good deal of controversy as to whether certain items are properly costs at all, and much of the matter which has been written must have been confusing to the lay mind, whilst accountants have no doubt reached the conclusion that most of the controversy would disappear if it were only realised that there are different kinds of problems for which cost information is required, and that the specific information differs from one problem to another.

There is, apparently, one cost term which is capable of an exact legal definition, viz., "p.c.," or "prime cost sum," a term which has come to be used in building and engineering contracts because of the difficulty of describing accurately, at the time the contract is entered into, every article to be used in the building or work. Instead, therefore, of giving a description of the article required, the contractor is directed in the specification to provide and fix the article, whatever it is, at the "p.c." or "prime cost sum" of so many shillings or pounds, as the case may be, which the architect thinks will be the probable prime cost of the article required. The architect may in addition define the meaning of "p.c." or "prime cost sum" and state that it is the net sum paid or payable to the merchant, either with or without, and usually without, any allowance to the contractor for profit.

Notwithstanding the ordinary acceptance of the term "prime cost sum," the contractor often seeks to recover not only the net cost, but the cost to an ordinary person, out of which the contractor has had the benefit of trade discounts as well as discounts for cash. It appears to be clear that he cannot be entitled to trade discounts (*Hippisley* v. *Knee Bros.* (1895), 1. K.B.,1), but whether he is entitled to discount for cash must depend upon the circumstances in each case. The building owner's obligation is to pay prime cost, and it would seem that he cannot be under any obligation to pay some other price. The contractor may be under no obligation to pay cash, but if he does, it would seem that he cannot charge the building owner more than he has paid, namely prime cost.

In the case cited, plaintiff employed defendants, as auctioneers, to sell goods for him by auction upon the terms that they were to be paid a lump sum by way of commission, and were further to be paid "all out of pocket expenses," including the expenses of printing and advertising. Defendants in due course sold plaintiff's goods. In rendering their account of the out-of-pocket expenses to plaintiff, they debited him with the gross amount of the printer's bill and the cost of advertising in the newspapers, although they had received discounts from both the printers and newspaper proprietors—a fact of which the plaintiff had no knowledge. There was evidence of a general custom for printers and newspaper proprietors to deal with auctioneers as principals, and to allow them a trade discount off their retail charges, which they would not allow to the auctioneers' customers if they dealt with them direct; and defendants in omitting to disclose to plaintiff the fact of the discounts did so in the honest belief that they were entitled under the custom to receive the discounts and retain them for their own use.

It was held that the defendants were not entitled to debit plaintiff with the gross amounts of printing and advertising bills, as by the terms of employment they were only to be paid their actual out-of-pocket expenses.

Obituary.

ERNEST HARWARD BARNASCHONÉ.

We record with regret the death on July 7th of Mr. E. H. Barnaschoné, F.S.A.A., who had been a member of the Society of Incorporated Accountants since 1898. Mr. Barnaschoné was a partner in the firm of Salmon, Barnaschoné & Co., 133, Aldersgate Street, London, E.C., which he founded in conjunction with Mr. H. T. Salmon, F.S.A.A., forty years ago. Mr. Barnaschoné was well known in the City of London, especially among those connected with the textile trade. He was a Freemason of many years' standing, and took an active part in the affairs of his lodge.

Society of Incorporated Accountants and Auditors.

COUNCIL MEETING.

A meeting of the Council of the Society was held on July 20th. There were present :—Mr. Walter Holman, President ; Mr. Percy Toothill, Vice-President ; Mr. F. J. Alban, Mr. A. Stuart Allen, Mr. C. Percy Barrowcliff, Mr. R. Wilson Bartlett, Mr. R. M. Branson, Mr. J. Paterson Brodie, Mr. W. Norman Bubb, Mr. Henry J. Burgess, Mr. Tom Coombs, Mr. W. Allison Davies, Mr. M. J. Faulks, Mr. Alexander Hannah, Sir Thomas Keens, Mr. Henry Morgan, Mr. C. Hewetson Nelson, Mr. Bertram Nelson, Mr. James Paterson, Mr. F. A. Prior, Mr. Joseph Turner, Mr. R. T. Warwick, Mr. Richard A. Witty, Mr. Fred Woolley, Mr. A. A. Garrett, Secretary, and Mr. L. T. Little, Deputy Secretary.

Apologies for non-attendance were received from Mr. D. E. Campbell, Mr. Arthur Collins, Mr. R. T. Dunlop, Mr. E. Cassleton Elliott, Mr. Edmund Lund, and Mr. A. H. Walkey.

INCORPORATED ACCOUNTANTS' CONFERENCE, BELFAST.

The President made a report to the Council of the proceedings at the Conference held in Belfast in June, 1937. The Council adopted unanimously the following Resolution which it was directed should be forwarded to the Belfast District Society.

> "That the President and Council of the Society of Incorporated Accountants tender their cordial thanks to the President, Vice-President, Committee and Honorary Secretary of the Belfast District Society for the arrangements made for the Conference, for the hospitality extended to the visitors and for the care in the preparation of the proceedings which were brought to a successful issue."

AMERICAN INSTITUTE OF ACCOUNTANTS, FIFTIETH ANNIVERSARY, 1937.

The Council adopted the following Resolution of congratulation :—

> The President and Council of the Society of Incorporated Accountants tender to the President and members of the American Institute of Accountants their cordial congratulations upon the attainment of the fiftieth anniversary of the foundation of the American Institute.
>
> The Society is appreciative of the contribution made by the American Institute to the development of the accountancy profession as a whole and particularly in the United States of America. The Council of the Society has been happy to enjoy the friendship of the American Institute of Accountants throughout its history and extends greetings to the members of that Institute and best wishes for its continued prosperity.

INSCRIBED VOTE OF THANKS TO MR. R. WILSON BARTLETT.

The President presented to Mr. Wilson Bartlett an inscription of the vote of thanks adopted by the members at the Annual General Meeting in May, 1937, with an expression of the appreciation of the members of the Council of Mr. Wilson Bartlett's services as President of the Society from 1935 to 1937.

EXAMINERS.

Mr. Walter Holman having requested to be relieved of his Examinership during his occupancy of the Presidency of the Society, it was resolved that his request be granted with much reluctance, and that he be thanked for his efficient services as an Intermediate Examiner during the past nine years.

It was further resolved to appoint Mr. Edward Baldry, F.S.A.A., London, to succeed Mr. Holman as an Intermediate Examiner.

ACCOUNTANCY CONGRESS IN PARIS, 1937.

The Council accepted with pleasure an invitation received from a number of bodies of Accountants in France for a representative of the Society to be a guest at La Semaine de la Compatabilité to be held in Paris in September, 1937.

SIR JAMES MARTIN MEMORIAL EXHIBITION.

The Council awarded the Sir James Martin Memorial Exhibition in connection with the Intermediate Examination, May, 1937, to Mr. Francis Albert Watt, articled clerk to Mr. J. P. Clarkson, Incorporated Accountant, London.

INCORPORATED ACCOUNTANTS' COURSE, 1938.

A report was made that the Warden and Fellows of New College, Oxford, had kindly granted to the Society facilities for a short course to be held at the College from July 13th to 17th, 1938.

DEATHS.

The Secretary reported the deaths of the following members :—

Mr. Ernest Charles Baxter (*Fellow*), Bulawayo, South Africa ; Mr. Samuel Wilson Croxford (*Associate*), Salisbury, South Africa ; Mr. Philip Horsley-Carr (*Associate*), Barnsley ; Mr. Walter Frederick Keeling (*Associate*), London ; Mr. Harry Luker (*Associate*), St. Helier, Jersey ; Mr. Archibald Macintyre (*Fellow*), Hamilton, Scotland ; Mr. John Ernest Sambridge (*Associate*), London ; Mr. Lewis Vizard (*Fellow*), Cheltenham ; Mr. Sholto Henry Wood (*Fellow*), London ; Mr. Charles Woollett (*Associate*), Birmingham.

RESIGNATIONS.

The following resignations were accepted with regret as from the dates indicated :—

December 31st, 1936 : Mr. William Henry Whaley (*Associate*), Gateshead.

December 31st, 1937 : Mr. John Burton Bardsley (*Associate*), Sheffield ; Mr. Jabez Beckett (*Fellow*), London ; Miss Helen Sybil Butlin (*Associate*), Plymouth ; Mr. Thomas Elsworth (*Fellow*), Bradford ; Mr. Arthur Edwin Evans (*Associate*), Birmingham ; Mrs. Norah Beaumont Legge (*Associate*), Wolverhampton ; Mr. John Stewart (*Fellow*), Sydney, Australia.

SPECIAL COUNCIL MEETING.

A Special Meeting of the Council was held on Tuesday, July 20th, 1937. Upon consideration of a report from the Disciplinary Committee, Mr. Alexander Walliss Cruickshank, Associate, Hull, was excluded from membership of the Society.

Industrial Welfare Society.

The Industrial Welfare Society is holding its Lecture Course on Industrial Law at the headquarters of the Society, 14, Hobart Place, Westminster. It will be conducted by Mr. H. Samuels, M.A., Barrister-at-Law.

The course is intended for all persons engaged in executive work in industry and commerce (managers, company secretaries, welfare workers, industrial medical officers and nurses, etc.), as well as for persons intending to take up such posts.

The lectures will be held on Mondays, from October 4th to December 6th. Each session will last 1½ hours (6.30-8 p.m.), about half an hour of the time being devoted to questions and discussion. The fee for the course is £2 2s. (executives of member firms, £1 12s. 6d.). Application for enrolment should be sent to the Secretary, from whom further particulars can be obtained.

ALLEGED NEGLIGENCE BY ACCOUNTANTS.

Leech *v.* Stokes Bros. & Pim.

APPEAL JUDGMENT.

The following is the judgment of the Supreme Court, Irish Free State, on an appeal from the decision of Mr. Justice Hanna in favour of the defendants, reported in our issue of December last.

THE CHIEF JUSTICE in delivering judgment dismissing the appeal, said : This is a motion on behalf of the plaintiff for an Order that the judgment of Mr. Justice Hanna dated November 23rd, 1936, be reversed and that judgment be entered for the plaintiff for such sum by way of damages as the Court may consider the plaintiff entitled to, together with the costs of the action and of this motion. The grounds stated in the notice of motion are that the findings of the learned Judge other than those numbered two and three in the transcript of the judgment are unsupported by any evidence and are against the weight of evidence, and that the learned Judge misdirected himself in holding that there was no actionable negligence or breach of duty on the part of the defendants. The action was brought to recover damages for negligence. The plaintiff is a solicitor and at the time of the negligence complained of was the senior partner in the firm of Crookshank, Leech & Fetherstonhaugh, solicitors, practising in Dublin, the junior partner being Francis Edward Fetherstonhaugh. The partnership was carried on upon the terms contained in a partnership agreement dated January 2nd, 1928, one of which was that the partnership commenced on April 6th, 1927. The plaintiff resided and practised as a solicitor in Coleraine, and he did not take any active part in the management of the business of the firm, which was left in the sole control of Mr. Fetherstonhaugh. In addition to the ordinary business of solicitors the firm acted as agents for the collection of rents of over forty estates, and the duty of receiving these rents and giving receipts therefor was entrusted to Thomas Aloysius Hill, who was the cashier and book-keeper. Hill had been employed in that capacity by the plaintiff's firm for very many years prior to the formation of the partnership, and he had always been regarded as honest and trustworthy.

In the year 1928 the income tax recovery agent of the Bank of Ireland, who was preparing Mr. Fetherstonhaugh's personal return for income tax, informed Mr. Fetherstonhaugh that such return could not be completed until the account of the firm for income tax and the distribution of the profits between the partners had been settled with the Inspector of Taxes. Thereupon Mr. Fetherstonhaugh communicated with Mr. Stokes, the senior member of the defendant firm of chartered accountants, who was a personal friend, and instructed him to prepare an account of the profits of the firm for the year ending April 5th, 1928, for the Inspector of Taxes. The defendants prepared that account, it was approved of by Mr. Fetherstonhaugh and, on his instructions, sent to the Inspector of Taxes, by whom it was accepted. In each of the succeeding years, 1929, 1930, 1931, 1932 and 1933 the defendants on similar instructions from Mr. Fetherstonhaugh prepared a similar account which was approved of by him and accepted by the Inspector of Taxes.

Mr. Fetherstonhaugh died on March 31st, 1934. On May 23rd of that year a new partnership was entered into by the plaintiff and Mr. Cecil Vanston. Mr. Vanston, very naturally, was anxious to have the accounts of the former partnership settled and the position of the firm ascertained, and with that object he employed a Mr. Sedgwick, a chartered accountant, to audit the accounts of the firm for the year ending on April 5th, 1934. In the course of his investigation Mr. Sedgwick discovered that in that year there were defalcations to the amount of over £500 for which Hill was responsible. On further investigation into the accounts of the previous years going back to the year 1920, Mr. Sedgwick discovered that Hill's defalcations extended over the whole of that period and, up to October, 1934, amounted in all to £8,392 17s. 5d. All the money embezzled was clients' money which Hill had received on account of rent from various tenants, and which should have been paid by him into Bank Account No. 2 and entered in the rentals. Hill gave correct receipts to the tenants, and filled in the counterfoils of the receipts correctly, but the entire amounts received were not lodged to No. 2 Account as Hill appropriated part of them to his own use.

Mr. Sedgwick reported the result of his investigations to the plaintiff, and thereupon the plaintiff instituted this action. The plaintiff alleges that the defendants were negligent in preparing the accounts of the profits of the firm for the years 1928 to 1933, and that if the defendants had exercised due care and diligence in that work they would have discovered Hill's defalcations and further defalcations by him would have been prevented. The plaintiff claims to recover from the defendants the sum of £3,750, the amount misappropriated during these years, which Hill is unable to repay. The action was heard and dismissed by Mr. Justice Hanna, and the plaintiff has appealed to this Court.

As this action is based on the alleged negligence of the defendants in the performance of a contract it is necessary in the first place to ascertain what was the work which the defendants contracted to perform, and secondly, to determine the standard of care which the law requires from a person who undertakes such work. I do not think that there was any serious controversy on either of these matters at the trial, and there was none on the hearing of this appeal. Mr. Justice Hanna found that the instructions given to the defendant firm were to prepare a report of the profits (of the firm of which the plaintiff was a member) for the Inspector of Taxes ; and that finding is not challenged. And, having reviewed a number of cases in which the duties of an auditor were considered, he defined the duty of an auditor as the duty " under the circumstances of the particular case and of his employment to exercise such care and skill as a diligent skilled and cautious auditor would exercise according to the practice of the profession." That is admitted to be correct. In this case as in most actions for negligence the difficulty is not in defining the duty owed by the defendant, but in determining whether that duty had been fulfilled.

On receipt of Mr. Fetherstonhaugh's instructions in the year 1928 Mr. Stokes directed one of his assistants, Mr. Deane, to go to the office of Crookshank, Leech and Fetherstonhaugh and make out an account of the profits of the firm for submission to the Inspector of Taxes. When Deane went to the office he saw Mr. Fetherstonhaugh, who told him to make out the account in such a way as would be suitable for submission to the Inspector of Taxes in order to arrive at the correct assessment. Mr. Fetherstonhaugh told Hill to produce the necessary books and Hill produced a book called the Costs Furnished Book, and a number of weekly summaries. Mr. Fetherstonhaugh told Mr. Deane that the Costs Furnished Book contained a statement of the entire income of the firm and that all the expenses of the firm were set out in the weekly summaries. Mr. Deane understood from his instructions from Mr. Stokes and from his conversation with Mr. Fetherstonhaugh that he was simply to extract

the figures from the books, and accordingly he never asked about any other books and he never heard about any other books, or saw them. He made both a summary and an analysis of the expenses as set out in the loose summaries in order to arrive at the proper totals, and to exclude any expenditure which in his opinion would not pass the Inspector of Taxes. In arriving at the income of the firm he took the amounts of the costs furnished and the agency fees as they appeared in the Costs Furnished Book without any checking, and having deducted certain sums by Mr. Fetherstonhaugh's directions, the propriety of which deductions is not challenged, he prepared a profit and loss account for the year ending April 5th, 1928. He showed this account to Mr. Fetherstonhaugh, who approved of it, and he then submitted it to Mr. Stokes. Mr. Stokes also approved of it, and he signed the certificate at the foot of it, which was in the following terms :—

" We have prepared the above account from the books of the firm and, subject to our report of this date, we certify that it is correctly drawn up in accordance therewith." The report referred to reads as follows :—

" Dear Sir,

We have pleasure in enclosing profit and loss account for the year ending April 5th, 1928.

" *Costs and Agency Fees :* This total has been compiled from the Costs Furnished Book which, we are informed, includes all costs and fees furnished during the year. In accordance with your instructions we have excluded the sum of £655 1s. 7d. as representing costs, etc., earned prior to April 5th, 1927, the date of the commencement of the present partnership.

Office Outlay : The total expenditure during the year, as shown by the weekly summaries, amounted to £1,325 18s. 5d., of which the sum of £450 4s. 2d. represented sundry disbursements charged to clients. These latter have been deducted from the costs and agency fees as shown in your statement, leaving office expenditure amounting to £875 14s. 3d. If you approve of the account we shall be pleased to forward a copy to the Inspector of Taxes on hearing from you. We are returning your statement herewith. Yours faithfully,

Stokes Bros. & Pim."

The profit and loss account and the report were subsequently sent by the defendants to the Inspector of Taxes. The Inspector at first made some objection on the ground that the income had been measured on a costs furnished basis, and not upon a cash basis, but after a long correspondence he accepted the account as furnished.

In the years 1929 and 1930 the account of the profits of the firm was prepared by Mr. Deane in the same manner as he had prepared the account for the year 1928. In 1929 the weekly summaries were discontinued, and the items which would have been entered in those summaries were entered in a " Clients' Ledger " and in 1930 a " Payments Book " was commenced in which the various outgoings appeared under separate headings. But the introduction of these books, which was done at Mr. Deane's suggestion, did not affect the procedure he followed in preparing the accounts, which remained the same throughout.

The negligence charged against Mr. Deane at the trial was—(1) that he did not prepare a balance sheet, (2) that, not having prepared a balance sheet, he did not vouch or test the agency fees, and (3) that, not having prepared a balance sheet, he should have reconciled the bank account and cash.

On the first charge—the omission to prepare a balance sheet—Mr. Justice Hanna said : " I am satisfied on the evidence that a correct profit and loss account for income tax could in fact be made out as Mr. Deane did it, without a balance sheet, but on the whole of the evidence as to the general practice of accountants of standing I am equally satisfied that none of them would have omitted to prepare, if possible, a balance sheet as supplementary to the profit and loss account. . . Equally, there is no doubt in my mind that if a proper balance sheet had been prepared these defalcations must necessarily have appeared on it. . . . ."

He restates this view in his findings set forth at the end of his judgment, the second finding being : " (2) For this purpose (that of preparing a report of the profits for the Inspector of Taxes) an auditor should if possible prepare a balance sheet in addition to a profit and loss account. The preparation of a proper balance sheet would have disclosed the defalcation." The learned Judge then considered the question whether in the circumstances it was feasible to prepare a balance sheet, and he came to the conclusion that it was not, in view of the books and documents that were available. He based that conclusion mainly on the report made by Mr. Sedgwick to the firm, dated February 5th, 1935, from which he quoted the following passages :—

" Up to April, 1927, a book, in which receipts and payments were supposed to be entered, was kept, and there was also a ledger in force, in which there were accounts for clients, but both books were kept in a most unsatisfactory manner, there being no entries of lodgments, or reconciliation in any way between the monies lodged and those received. Furthermore, the accounts in the ledgers were not agreed with the rental accounts that were prepared, and in fact this could not have been done in view of the irregularities which took place, with the result that the books referred to were of little or no value in connection with our work.

" For the period from April, 1927, to April, 1931, the position was even worse, there being neither cash book nor ledger of any kind kept, the only record of a financial nature, in book form, was what might be described as a summary of fees received and office expenses, and it would appear that it was from this summary account that the auditors made up the profit and loss account each year. During this period of four years, clients' accounts, in the nature of rentals, were apparently made up from the rental register, cheque blocks and lodgment dockets, without any accounts being written up showing the position with clients."

On that report, which was corroborated by the evidence of Mr. Deane, Mr. Justice Hanna was satisfied that a balance sheet could not have been prepared in the absence of a clients' ledger and a cash book, that if a balance sheet had been necessary it would have been necessary " to write up the cash book and have all the entries posted to it and the entries made from the cash book to the bank account written and reconciled," and that it would also have been necessary to prepare a clients' ledger and write it up. And having come to that conclusion he held that Mr. Deane was not guilty of negligence in accepting Mr. Fetherstonhaugh's statement that the Costs Furnished Book and the weekly cash summaries contained correct accounts of income and expenditure, and in omitting to prepare a balance sheet, and that instructions from Mr. Fetherstonhaugh to dispense with a balance sheet should be implied.

Mr. Justice Hanna held that Mr. Deane was not negligent in omitting to vouch the agency fees, and that the vouching of such fees could not reasonably have been done in such a way as to disclose the defalcations. That finding

has not been challenged in this appeal. He also held that in the absence of any cash book there was no cash account with which the bank account could be reconciled, and that it was not negligence on Mr. Deane's part that he did not endeavour to prepare and write up a cash book from such materials as were available for that purpose.

As I understand the argument advanced on behalf of the appellant on this branch of the case it is this, that Mr. Deane was negligent in not preparing a balance sheet, or in not refusing to prepare a profit and loss account until the books were written up so as to enable him to prepare a balance sheet, or in not stating expressly in the certificate appended to the profit and loss account that the figures appearing in the account had not been checked, or in not suspecting that something was wrong when he found that proper books had not been kept by Hill, who was both cashier and book-keeper.

I do not think that negligence on any of these grounds has been established. Mr. Justice Hanna found that there was no proper book-keeping material available for the preparation of a balance sheet, and the only objection that has been urged against that finding is that there was material in the office of the firm, not disclosed to Mr. Deane, from which the proper and necessary books could have been constructed and written up if several months' work had been spent in doing so. That objection might be unanswerable if the preparation of a balance sheet was essential to enable Mr. Deane to perform the work his employers had contracted to do. But on the evidence given in this case Mr. Justice Hanna was of opinion that a balance sheet was not essential, though it was a reasonable and desirable requirement, and I see no reason to dissent from the conclusion at which he arrived on that matter. That being so I do not think that in the circumstances Mr. Deane was negligent in not preparing a balance sheet, or in refusing to prepare a profit and loss account until the books were written up. The suggestion that Mr. Deane was negligent in not making it clear in the certificate that the figures in the account had not been checked is in my opinion adequately met by the uncontroverted facts that he had the express assurance of Mr. Fetherstonhaugh that the Costs Furnished Book and the weekly cash summaries contained full and accurate entries of the entire income and expenditure of the firm, and that the report of the 18th May which was appended to the first certificate expressly states that the entries have been taken from those two sources. It is true that no similar report was sent with the accounts for the years 1929 and 1930, but it was not and could not be suggested that Mr. Fetherstonhaugh was not aware of the materials from which those accounts had been prepared, or that he was in any way misled by the form of the certificates. As regards the plaintiff the position was this, that he had complete confidence in Mr. Fetherstonhaugh and Hill, he was furnished with copies of the profit and loss accounts, and on his own evidence I think Mr. Justice Hanna was quite entitled to find, as he did, that he (plaintiff) was not in any way misled by them or by the certificates attached to them. Mr. Justice Hanna held that the plaintiff would be bound by any knowledge that his partner Mr. Fetherstonhaugh had, and no argument was addressed to us to show that the view expressed by the Judge on that matter was wrong. The argument that Mr. Deane was negligent in that his suspicions were not aroused by the absence of what has been called "book-keeping material" in the office is in my opinion answered by the facts that he was not employed to audit the accounts but merely to prepare profit and loss accounts for the purpose of assessments to income tax, and that he had Mr. Fetherstonhaugh's assurance that the Costs Furnished Book contained the entire income and that the weekly summaries contained all the expenses, that there was nothing in the Costs Furnished Book or in the weekly summaries to arouse the suspicions of any person, and that he never saw any other books.

In the years 1931 to 1933 the profit and loss accounts were prepared by Mr. McClelland, an assistant in the defendant firm. On his first visit to Mr. Fetherstonhaugh's office in 1931 Hill produced to him the Costs Furnished Book, and the Payments Book commenced in 1930 which contained the outgoings. Mr. McClelland stated in his evidence that for the preparation of the profit and loss account in accordance with his instructions a balance sheet was not required, but that it occurred to him that a balance sheet would be of great value to Mr. Fetherstonhaugh, and he asked Hill if he had any other books from which a balance sheet could be prepared. Hill said he had not, that the firm did not keep any record of incoming cash, but that they kept loose rentals which were written up from cheque blocks and receipt blocks. Mr. McClelland prepared the account from the Costs Furnished Book and the Payments Book, these being the only books that were mentioned or shown to him, and he showed it to Mr. Fetherstonhaugh, who approved of it. He submitted it to Mr. Stokes, and when doing so he told him of his conversation with Hill. Mr. Stokes approved of the account, and he directed Mr. McClelland to see Mr. Fetherstonhaugh and to discuss with him the advisability of keeping adequate books. Mr. McClelland subsequently did so, and Mr. Fetherstonhaugh agreed that a cash receipts book, a payments book in an altered form and a clients' ledger should be kept. These books were started by Mr. McClelland and he showed Hill how they should be kept.

In 1932 when Mr. McClelland attended at the firm's office to prepare the account for that year he found on enquiry that the books he had introduced the previous year had not been written up. These books were not essential for the preparation of the account for the Inspector of Taxes, but Mr. McClelland said that if they had been written up he would have taken certain figures from them, and he asked Mr. Fetherstonhaugh to direct Hill to write them up. Mr. Fetherstonhaugh said that Hill had not time to do so, and, after waiting for some months for the books to be written up, he directed Mr. McClelland not to wait any longer and to prepare the account "in the same way as before." Mr. McClelland accordingly did so, and the account prepared by him was accepted and approved of by Mr. Fetherstonhaugh and by Mr. Stokes. In addition to preparing the account for this year Mr. McClelland vouched the bank lodgments and checked the tots of the Accounts No. 1 and No. 2, and he also made a reconciliation to see that the bank accounts agreed with the pass books. In checking the Costs Furnished Book he found that cash received on behalf of the firm amounting to £1,249 2s. 3d. which should have been lodged in No. 1 Account had been lodged in No. 2 Account and he made a note in the Costs Furnished Book that that sum should be transferred to No. 1 Account.

In September, 1933, Mr. McClelland attended to prepare the account for that year. He found that the clients' ledger had not been written up, and on reporting this to Mr. Fetherstonhaugh he got the same explanation as in the previous year—that Hill was overworked and had not had time to do it—and he was again directed to prepare the account as in the previous years. This he did, making up his account from the Costs Furnished Book and the Payments Book, taking the agency fees from the separate

account in the ledger in which they now appeared instead of from the Costs Furnished Books in which in former years they were entered. The account for this year as so prepared was approved of by Mr. Fetherstonhaugh and by Mr. Stokes.

It was contended on behalf of the appellant that Mr. McClelland was negligent in connection with the accounts prepared by him. It was said that in 1931 he had become aware of the fact that proper books were not kept by the firm and that his complaints on that matter to Mr. Stokes and to Mr. Fetherstonhaugh show that he believed that a balance sheet was necessary for the purpose of the profit and loss account. But his evidence was most positive that a balance sheet was not necessary, that the account had been prepared before the question of a balance sheet had been raised, and that the discussion of a balance sheet and the keeping of proper books was a matter quite independent of the profit and loss account and was paid for as such by the firm. The trial judge accepted his evidence in these matters and I see no reason why this Court should not accept it also. It was said that in 1932 and 1933, when he found that the books he had started in the year 1931 had not been written up, he should have refused to prepare the account until they were. I cannot take that view, having regard to the fact: (1) that the keeping of these books was quite independent of the account, and (2) that Mr. McClelland had the express directions of Mr. Fetherstonhaugh not to wait until the books were written up before preparing the accounts. Again we were asked to hold that Mr. McClelland's suspicions should have been aroused when he found that such a large sum as £1,249 2s. 3d. had been lodged in No. 2 Account instead of No. 1 account, more particularly when the transfer of that sum to the latter account in accordance with his directions would leave the former account overdrawn to an amount of nearly £1,190. There would be great force in that argument were it not for the fact that Mr. Justice Hanna was satisfied from his inspection of the books that it was an ordinary practice of Hill's to pay the firm's monies into No. 2 Account instead of into No. 1, and that this was nothing unusual in an office where nearly everything was done wrong.

I am therefore of opinion that Mr. Justice Hanna was right in holding that the plaintiff had failed to establish any actionable negligence or breach of duty on the part of the defendants in any of the matters relied on. That being so, it is not necessary for me to consider whether he was right in his finding that the accounts prepared by the defendants were in fact accurate in all respects. Mr. Denning has argued that Hill's defalcations were "bad debts" for which a deduction would be allowed by the income tax authorities, and that the accounts in question—in which no deduction is claimed—were therefore not accurate. Even if that be so it does not avail the plaintiff in this action in the absence of evidence that the defendants were negligent in not discovering such defalcations.

Justices FITZGIBBON, MURNAGHAN and GEOGHEGAN concurred.

Justice MEREDITH said: I agree; but I feel obliged to say that I only do so after considerable hesitation. Once the finding of Mr. Justice Hanna, that the instructions given by the firm of Crookshank, Leech and Fetherstonhaugh to the defendants were instructions to prepare an account of the profits of the firm for the Inspector of Taxes, is accepted, there seems to be no escape from the conclusion arrived at in the judgment of the Chief Justice which I have had the advantage of reading. There is no dispute as to what passed between Mr. Featherstonhaugh and Mr. Stokes; but I have had a feeling that the purely business instructions on behalf of the firm were mixed up with merely friendly and personal conversation and communications and that the two should be disentangled, and so I have felt considerable doubt as to whether the defendant firm were justified in interpreting their instructions otherwise than simply as instructions to prepare a profit and loss account for the firm. Had the defendants set before themselves the task of preparing such an account in the ordinary course of business, and in accordance with their ordinary practice, I cannot but believe that they would have discovered what Mr. Sedgwick discovered in two days, namely, the existence, or probable existence, of a considerable leakage. Such a discovery is all that was needed to save the situation; and the much greater time and expense that a full investigation consequent on the discovery would have entailed is another matter. It seems to me when accountants are instructed to prepare and do prepare and certify an account of a well-defined character such as profit and loss account, that, if they rely upon any addition to the instructions limiting their duties in a special manner and lessening their ordinary responsibilities, they should take the utmost care to see that their instructions are perfectly clear and definite in respect of those limitations, and clear in point of significance to persons not experts in accountancy matters who are coming to them as experts and putting themselves in their hands. And if the certificate which is given is limited by reference to such instructions or otherwise a similar clearness and definiteness is required. Mr. Fitzgibbon contended very plausibly that confusion has been introduced into the case by not distinguishing between the duty owed by the defendants to the firm of Crookshank, Leech & Fetherstonhaugh and a duty which they are supposed to owe to themselves, as members of a profession which sets up a very high ethical standard which, in particular, has earned recognition for their certificates by the revenue authorities. I was, however, more impressed by the contention in the elaborate argument of Mr. Denning, that the real confusion was between an account that could be required by the firm as such—an account which could be worth even such a small fee as £4 19s. to the firm who are taken as having given the instructions and who, in fact, paid the fee—and the personal requirements of Mr. Fetherstonhaugh, whom Mr. Stokes desired to oblige and to assist in getting through with his personal return for income tax purposes. The business of an accountant and auditor is innately unsympathetic, and it is liable to suffer in efficiency when undertaken in a more or less obliging and friendly spirit. Nevertheless, under all the circumstances of the case, which I need not refer to in detail, I cannot say more than that the proper interpretation of the instructions received by Mr. Stokes seems to me a doubtful question. But I am relieved of the necessity of resolving my doubts on that point as Mr. Denning went through the findings of Mr. Justice Hanna one by one, and the first finding of the learned Judge, which was the one dealing with the actual instructions, was one of these expressly stated to be accepted. Accordingly, accepting that finding, I think it is quite clear that the plaintiff's firm got all they bargained for. The plaintiff in his statement of claim made the case that he had been induced by the certificate given by the defendants not to undertake an investigation that he would otherwise have undertaken. That case is definitely negatived by the evidence. The plaintiff was in no way misled; and, however the instructions should have been interpreted on the strict principles that I have indicated, there is no doubt that the plaintiff, no more than Mr. Fetherstonhaugh, never imagined that the defendants were instructed to carry out, or had carried out, an investigation calculated to disclose the true

financial position of the firm—though, as I have indicated, I do not consider that would have disposed of the case if the instructions had been, simpliciter, to prepare a profit and loss account for the firm. Consequently, if the case had to be dealt with on a different basis from that of the finding of Mr. Justice Hanna, and if the defendants were then found liable for the large amount claimed, it would certainly, having regard to all the facts of the case, be meting out stern law with a vengeance.

Society of Incorporated Accountants and Auditors.

South African (Eastern) Branch.

ANNUAL MEETING.

The ninth annual general meeting of the South African (Eastern) Branch of the Society was held at Durban on May 20th. Mr. A. E. Hurley (Chairman of the Branch) presided.

On the motion of the Chairman, the report of the Committee and the accounts for the year ended December 31st, 1936, were adopted.

Mr. F. E. Osborn was re-elected as auditor, and as there were no fresh nominations for the Committee the Chairman declared that Mr. A. E. Hurley, Mr. G. E. Noyce, and Mr. Douglas Mackeurtan were re-elected for the ensuing three years.

A unanimous vote of thanks was accorded to Messrs. W. Murray Smith & Berend for the use of their Board Room for Committee meetings throughout the year, and also for the annual general meeting.

The Chairman said that although the Committee had placed on record in the annual report their appreciation of the services rendered by the Honorary Secretary, Mr. W. R. Fraser, he would like to propose that the meeting should pass a resolution in confirmation. The resolution was seconded by Mr. A. A. Berend and carried unanimously.

A unanimous vote of thanks was accorded to Mr. A. E. Hurley for his services to the Eastern Branch as Chairman of the Committee.

At a meeting of the Committee held after the general meeting, Mr. A. E. Hurley was asked to continue to act as Chairman for a further year, but said he felt that the honour should pass to some other member of the Committee. Mr. N. E. O. Jones was then elected Chairman of the Branch.

Report.

The usual examinations of the Society were held in May and November, 1936. The entries and results were as follows :—

	Sat.	Passed.
Intermediate Examination ..	10	7
Final Examination	10	5

Mr. R. G. H. Burns obtained a bracketed First Certificate of Merit at the May Final examination and Mr. C. I. Mun-Gavin obtained a bracketed Second Certificate of Merit at the same examination. Your Committee congratulates most heartily these two gentlemen.

MEMBERSHIP.

The total number of members over whom your Committee has jurisdiction was at December 31st, 1935, 57. During the year under review four members were transferred to another register, while two new members were elected and one transferred from the English register. The total membership in Natal, therefore, at December 31st, 1936, was 56, including 21 Fellows and 35 Associates.

MEMBERSHIP OF COMMITTEE.

The following members of the Committee retire in terms of the constitution of the Branch, but are eligible and offer themselves for re-election :—Mr. A. E. Hurley, Mr. G. E. Noyce, Mr. Douglas Mackeurtan.

PARLIAMENTARY BILLS.

The Accountancy Bill as drafted by the Commission has been the subject of consideration by the various bodies of accountants in South Africa, and in the meantime is in abeyance.

The Companies Amendment Bill has been before Parliament and reported upon by the Select Committee appointed to deal therewith. It is not likely to be dealt with this year.

HONORARY SECRETARY.

Your Committee desires to express its appreciation of the services rendered by your Honorary Secretary, Mr. W. R. Fraser, during the year.

RESTRICTIVE COVENANT UNENFORCEABLE.

An action concerning a dispute between accountants was decided by Mr. Justice Clauson in the Chancery Division last month.

Donald H. Bates & Co., of Tunstall, Staffs, claimed an injunction restraining the defendant, Mr. William Norman Dale, of Edward Street, Leek, his servants and agents, from carrying on or managing, either alone or jointly, the business of an accountant, an incorporated accountant or a chartered accountant, within a radius of 15 miles from the Town Hall, Leek, Staffordshire, for a period of fifteen years from August 8th, 1927, which was in breach of an agreement dated December 24th, 1927, made between the plaintiffs and the defendants.

Mr. Dale, according to counsel, practised in 1927 as an accountant at Market Place, Leek. The plaintiffs were also in business as accountants at Hanley, Tunstall and Longton. Under an agreement dated December 24th, 1927, plaintiffs purchased Mr. Dale's practice. The agreement contained a clause restraining defendant from carrying on business within a radius of fifteen miles from the Town Hall, Leek. Plaintiffs later agreed to employ defendant at Leek as their manager for a period of five years.

Subsequently Mr. Dale was given notice, but he left the employment on May 1st, 1936, before his notice expired, and commenced to practise as an accountant at Leek. Plaintiffs contended that this was a breach of the agreement of December 24th, 1927, and asked for an injunction.

Mr. Dale admitted leaving the employment of the defendants without waiting for the expiration of the notice, but only after interviews with the principals of the plaintiff firm. He contended that the restrictive covenant contained in the sale agreement was, in the circumstances, unreasonable and void, and accordingly he had not committed any breach.

Mr. Justice Clauson, giving judgment, said he had come to the conclusion, after hearing the evidence, that the covenant set up by the plaintiffs could not be enforced.

The protection it would confer was far more than it should be in all the circumstances of the case. Therefore it was unenforceable, and the action therefore failed and would be dismissed with costs.

Society of Incorporated Accountants and Auditors.

MEMBERSHIP.

The following additions to and promotion in the Membership of the Society have been completed since our last issue :—

ASSOCIATES TO FELLOWS.

BILLIMORIA, BHIKHAJI SHAPURJI (S. B. Billimoria & Co.), 113, Esplanade Road, Fort, Bombay, Practising Accountant.

DREYER, JOHANNES HUBERT, B.Com. (M. Dreyer & Co.), Lawley's Buildings, Fox Street, Johannesburg, Practising Accountant.

ASSOCIATES.

ABRAHAMS, SIDNEY LIONEL, with Wolpert & Abrahams, 1-6, Wintons Chambers, West Street, Durban.

BRERETON, HARRY, with Wayte, Bednall & Co., 31, Albion Street, Hanley, Stoke-on-Trent.

CHALMERS, ROBERT JOHN, with Roberts, Allsworth, Cooper Bros. & Co., 89, Stanley House, Commissioner Street, Johannesburg.

COCKMAN, ALBERT, formerly with Harold F. Joy, 28, St. Thomas Street, Weymouth.

DOWDLE, PHILIP JOHN, with D. P. C. Blair, 520-1, Ægis Building, Loveday Street, Johannesburg.

DUGMORE, CECIL EGERTON, with Douglas, Low & Co., P.O. Box 2820, Johannesburg.

FERRAR, WILLIAM HUGH, with Roberts, Allsworth, Cooper Bros. & Co., Stanley House, Commissioner Street, Johannesburg.

FOXON, CHARLES MALCOLM, with Billsons, Cullen & Broome, Vernon House, 12-18, Friar Lane, Nottingham.

FRANKLIN, BENJAMIN, LL.B., Examiner, Estate Duty Office, Somerset House, London, W.C.2.

GRIER, WILLIAM MATTHEW, with James A. Scott, Town Chamberlain, Kilmarnock.

HAY, HATTLEY PERRY, City Treasurers' Department, Municipal Offices, 43, Northgate Street, Chester.

HUGHES, THOMAS, formerly with Harry Cunningham, Priestley & Co., Hills Chambers, 189, Norfolk Street, Sheffield.

KAY, DONALD MCGREGOR, with Price, Waterhouse, Peat & Co., 10-14, Standard Bank Chambers, Commissioner Street, Johannesburg.

KEY, EDMUND ASTON, with Goldby, Panchaud & Webber, Prudential House, Fox Street, Johannesburg.

LANGDON, FRED TALBOT, with James Stewart & Steyn, 14-18, United Buildings, 33, Rissik Street, Johannesburg.

LLOYD, EDGAR LLEWELLYN, with Douglas Low & Co., P.O. Box 2820, Johannesburg.

MACDONALD, GORDON ALEXANDER, with James Stewart & Steyn, 14-18, United Buildings, 33, Rissik Street, Johannesburg.

MACKAY, HARRY ANGUS, with Whiteley Bros., P.O. Box 2162, Johannesburg.

MACRAE, DUNCAN CHARLES, formerly with P. G. Stembridge, Cadogan Chambers, 6, Cherry Street, Birmingham.

MARJORAM, CYRIL IVOR, with Harper-Smith, Moore & Co., 7, The Close, Norwich.

MILFORD, CECIL STANLEY, with Palmer & Kent, Transvaal Goldfields Building, Fraser Street, Johannesburg.

MICHELL, BERNARD PHILIP WILSON, with J. H. Champness, Corderay & Co., 10, St. Swithin's Lane, London, E.C.2.

MOORE, THOMAS WILLIAM EDWARD, formerly with Thornton & Thornton, Prudential Chambers, Banbury.

NEWSON, EDWARD SURRURIER, with Deloitte, Plender, Griffiths, Annan & Co., 201, Consolidated Building, Fox Street, Johannesburg.

PERLZWEIG, Meyerbeer, formerly with Gibson, Harris, Prince & Co., Palmerston House, Old Broad Street, London, E.C.2.

PITTMAN, ALFRED TAYLOR, B.A., Finance Department, Town Council of Germiston, Transvaal.

RAE, DUNCAN KENNETH, with Carruthers, Tucker & Higgerty, 901 to 910, Shell House, Rissik Street, Johannesburg.

RORKE, WILLIAM BUCKLAND, with Dougall, Lance & Hewitt, Provident Building, 257, Pretorius Street, Pretoria.

SMETHERHAM, JOHN FRANCIS, with Price, Waterhouse & Co., 10-14, Standard Bank Chambers, Johannesburg.

SMITH, KENNETH LAMONT, A.C.A. (Deloitte, Plender, Griffiths, Annan & Co.), 201, Consolidated Building, Fox Street, Johannesburg, Practising Accountant.

SYLVESTER, MARTIN, formerly with Clifford Towers, Woodroffe & Co., 5/6, Bucklersbury, London, E.C.

THIAN, CLIFFORD PETER, with Deloitte, Plender, Griffiths, Annan & Co., 17 and 18, Royal Exchange Building, Smith Street, Durban.

THOMPSON, GRIFFITH MOORE, formerly with Benbow & Airs, Derngate House, 45, Derngate, Northampton.

WALLACE, ROBERT EDWARD, with Douglas Low & Co., P.O. Box 2820, Johannesburg.

WEBB, ALEXANDER with Alfred Shantland & Sons, 18, Windsor Place, Cardiff.

THE PROFESSIONAL CLASSES AID COUNCIL.

The sixteenth annual report of the Professional Classes Aid Council, covering the year ended April 30th, 1937, shows that contributions have been well maintained, but expenditure has exceeded income by £841. This is partly accounted for by the inclusion in the year's accounts of an additional amount of about £500 for education fees for the summer term, which began early.

Financial aid or help in kind was given to 365 families, and over 300 enquirers were advised where to apply for help.

Twenty special annual grants are being paid from the fund inaugurated in 1927 for elderly and infirm applicants. Grants have been made for the education of 123 children, but owing to restricted funds the Council are forced to consider with great care new applications for recurring expenditure of this type. Assistance has been given in many cases of illness and to meet temporary difficulties of various kinds.

The Council's general policy is to render applicants independent where possible rather than merely to alleviate their difficulties. Co-operation is maintained with the benevolent funds of the various professional bodies, most of which are represented on the Council, and care is taken not to overlap.

TAYLOR *v.* THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES.

This case was heard in the Court of Appeal before the Master of the Rolls, Lord Justice Romer and Lord Justice Mackinnon.

The MASTER OF THE ROLLS, in delivering judgment, said:

The defendants in this action are the Institute of Chartered Accountants in England and Wales and a number of gentlemen who constitute the Council of the Institute. The Institute is incorporated by Royal Charter. On May 5th, 1937, at the Annual General Meeting of the Institute, in the ordinary way the report and accounts for the year came up for approval, and to the resolution that the report and accounts should be adopted an amendment was proposed by Mr. Bayley and seconded by Mr. Taylor, and the amendment was in this form: that the following words be added to the resolution adopting the report and accounts—these are the words:

> "Subject to the exclusion of the sum of £3,500 shown in the accounts as 'allowance to provincial societies and London Students' Society for tuition' pending a complete inquiry into and report on the circumstances in which the allowance was voted and the publication of the report of the inquiry."

That amendment having been put to the meeting and declared by the chairman to be lost on a show of hands, Mr. Taylor demanded a poll. The meeting was adjourned and a notice was then sent out, together with polling papers, in accordance with the Bye-Laws of the Institute. I need not trouble about the notice, except with regard to one matter, which is this. At the foot of the notice there appeared the following statement underlined: "These voting papers should be returned to the Institute in the accompanying envelope not later than the 18th May, 1937." Now it is not argued on behalf of the Institute that that instruction is in accordance with the relevant bye-law relating to the taking of polls, because under that bye-law the relevant provision is this, in Bye-Law 98:

> "Voting papers containing such propositions shall be then issued by the Council within seven days after the meeting, and shall be returnable so as to be received by the Council within fourteen days after the meeting."

In order to comply with that provision, the date in the note which I have read should have been, not the 18th May, but the 19th. The votes which were cast upon that poll were examined by the scrutineers appointed, and on May 31st a notice was sent out giving notice of the resumption of the adjourned meeting which was to take place on June 8th, 1937, "to receive the reports of the scrutineers as to the result of the voting on the amendment and on the resolution"—there was a substantive resolution with which this action is not concerned—"with regard to which voting papers were circulated, and to transact the business left unfinished at the meeting." The main business which was left unfinished at the meeting was the matter of the resolution adopting the report and accounts.

Now, Mr. Taylor, on June 3rd, 1937, issued a writ in the Chancery Division, wherein he is described as suing on behalf of himself and all the other members of the Institute of Chartered Accountants in England and Wales except those who are defendants, and the defendants, as I have said, were the Institute and the members of the Council. The relief that he asked for was this: he asked for

> "A declaration that the poll be taken on the 18th and/or 19th May, 1937, upon a motion by Victor Henry Bayley, to amend a resolution for the adoption of the report and accounts of the defendant Institute for the year ending December 31st, 1936."

Then he sets out the amendment and claims that the poll was and is invalid, and he asks for

> "An injunction restraining each of the defendants from taking any steps to give effect to the said poll or otherwise proceeding or acting upon the said poll on the footing that the same was or is valid."

The notice of motion was served with the writ and the matter came on for decision upon that interlocutory motion before Mr. Justice Bennett. It was not agreed at the hearing of the motion that the motion should be treated as the trial, but before us it was agreed by counsel on both sides that the motion should be treated as the trial, and accordingly the decision that we are now giving is a decision as on the trial of the action. I should say that Mr. Justice Bennett granted the plaintiff the relief that he was asking for and made an order to the following effect: "That the defendants be restrained until judgment in this action or until further order from taking any steps to give effect to or otherwise proceeding or acting upon" the poll to which I have referred.

So far as the evidence is concerned, I do not think there is any relevant evidence that I need refer to, except perhaps this, that the report of the scrutineers showed on the face of it two things, first of all a majority against the amendment, and secondly, that certain polling papers which were received before midnight on the 19th were counted as recording valid votes. The ground on which the plaintiff puts his case is this, and this view was apparently accepted by the learned Judge. He says this is a case where a right of the plaintiff as a member of the Institute has been infringed, and that he is accordingly entitled to maintain an action complaining of that infringement and asking for the relief that is appropriate in the circumstances. I should say this, to begin with, that on the facts of this case I have difficulty in appreciating what urgent risk or danger there was which would have justified the granting of an interlocutory injunction, because the parties had not agreed that the motion should be treated as the trial. However that may be, the learned Judge acceded to the argument put before him by the plaintiff and rejected the argument put forward by the defendants, which was to the effect that the well-known rule, which is commonly called the rule in *Foss* v. *Harbottle*, made the action, in the circumstances of this case, incompetent. It is important to realise what the real nature of the relief being asked for is. When the position is analysed, it comes, I think, to this. When the motion for the adoption of the report and accounts was proposed and seconded and an amendment was proposed and seconded, according to strict and proper procedure it would not have been right to proceed to deal with the substantive motion until the amendment had been got out of the way. If the amendment was negatived, then, of course, the substantive motion could have been proceeded with. The effect of granting the relief for which the plaintiff asks would be merely this, that unless and until a vote was taken on the amendment, it would not be competent for the Institute to act upon the footing that its accounts had been generally approved; in other words, the only substance in the plaintiff's claim relates to the approval or the non-approval of the Institute's report and accounts.

Now, speaking for myself, I cannot imagine any matter

which is more a matter of the internal administration of a corporation than such a matter as that, the approval or non-approval of the Institute's accounts. If they are not approved, I am at a loss for the moment to see what consequences are going to follow. Surely it must be a matter for the decision of the majority of the members, for them to decide whether or not they wish to have litigated the question as to whether the Institute's Council is to act on the footing that the report and accounts are or are not adopted. Now it is perfectly well settled that when a wrong has been done to a corporation, be it a corporation established by Charter or a company incorporated under the Companies Acts, *prima facie* it is for the corporation, and the corporation alone, to complain of that wrong, and an action by anybody but the corporation is incompetent. There are very sound reasons, quite apart from technical reasons of procedure, why that rule should be adopted, because it would be quite intolerable if individual members of corporations were to be entitled to come to the Courts complaining of irregularities in the ordinary procedure of the corporation, in cases where the irregularity is one which the corporation itself, acting in the ordinary way by a vote of its members, can waive. In the present case it is said that while the rule is indisputable that the Court cannot entertain such an action, this falls within an exception, and the way in which it is put is this—it is put really in one of two alternative ways. It is said first of all that Mr. Taylor, who was, I think, the seconder, if not the proposer, of the amendment, has got some individual right as the seconder, and that Mr. Bayley, as proposer, would have had an individual right, different from the right of all the other members of the Institute, a right to have the amendment which he seconded (or in Mr. Bayley's case proposed) taken to the test of a poll properly conducted, and that any irregularity in the taking of that poll was an infringement of that special particular individual right which he had as the seconder or the proposer, as the case might be, of the amendment. I am quite unable to accept any such proposition. It appears to me that the person who proposes, or the person who seconds, an amendment or a resolution has no special right over and above the rights of his fellow members of the corporation. No authority was cited in support of Mr. Tucker's proposition, and I am not prepared to accept it; it seems to me to be wrong in principle. The alternative way in which it is put is this. It is said: granted that no special particular right exists in the proposer or the seconder of such an amendment, nevertheless every member of the corporation has got an individual right to have a matter which has been duly proposed and seconded put to the test of a vote in accordance with the strict machinery laid down by the rules governing the corporation. It is endeavoured to place that simple right in the same category as the right, for example, which every shareholder has to cast his vote on a matter which is brought before a meeting. In my opinion, that argument is quite misconceived. It is perfectly true in one sense that every member of a corporation has got the right to have the affairs of the corporation conducted in strict accordance with all the rules and regulations which govern it. When that is said, it certainly does not mean that the persons enjoying that right are entitled, in protection of it, to litigate in their own names in the way in which it is sought to litigate here. The right indeed, when one speaks of it as a right, is a right of a totally different character, and in fact the rule in *Foss* v. *Harbottle* is a rule which negatives the right of a shareholder to enforce in his own name rights of that description. Now when you come to the individual right of a shareholder to vote, or the individual right of a shareholder to receive his dividends, or the individual right of a director to take part in the deliberations of the board, when you get special rights of that kind, those are rights which the individual, in his own name, is entitled to protect. In the present case, it appears to me that the so-called right of a shareholder in relation to the taking of this poll is merely a right which is the ordinary right to require the machinery of the company to be properly put in motion according to the rules, and I can see no reason whatsoever for treating the right to have a poll conducted in accordance with the rules in the same category as the special right of a shareholder to record his vote. It appears to me that this is merely a simple straightforward case where the Institute is entitled, if it so pleases, to complain of an irregularity which it is proposed to commit, the irregularity being to act upon the footing that that amendment has not been carried, with the consequence that the report and accounts will be adopted, assuming that the resolution to that effect at the adjourned meeting is carried. That is a mere irregularity which the members of the Institute are perfectly entitled to ignore and waive if they please. The plaintiff is indeed in this dilemma: either the majority wish this litigation to go on or they do not. If they wish it to go on, an action in the name of the Institute could have been brought, and it would not have been objected that the action was being brought without the authority of the Institute. If such an objection was taken, the Court, in accordance with the usual procedure, would have seen that steps were taken to ascertain the wishes of the majority. If the plaintiff's case is that the majority of members wish this litigation to take place, it would have the result, if it were successful, of hanging up the report and accounts indefinitely. That is a way in which it could have been done. On the other hand, if the majority do not wish the action to go on, that is a matter for the majority to decide, and is a sufficient reason why the name of the Institute could not have been used as plaintiffs in the action. In my opinion, this is really a clear case, when the facts are understood, for the application of the rule in *Foss* v. *Harbottle*, and the appeal must be allowed.

LORD JUSTICE ROMER said:

I agree. It is to be observed that in this case the plaintiff is not complaining that he has been excluded from any meeting of the Institute or that at any meeting of the Institute at which he attended, either in person or by proxy, his vote has been improperly disallowed. He is not seeking to enforce in this case any individual right of his own, as indeed is sufficiently apparent from the fact that he has thought fit to sue, not only for himself, but on behalf of himself and the other twelve thousand members of the Institute other than the comparatively few whom he has added as co-defendants with the Institute itself. What he is complaining of in this action is that a certain poll had not been conducted in accordance with the Bye-laws of the Institute. Now, I am willing to assume, for the purposes of this judgment, without in any way deciding it, that in making that allegation he is right, and that the poll has not been held in accordance with the Bye-laws. But what is the result of that? It is, as the Master of the Rolls has just pointed out, that the substantive resolution adopting the report and accounts of the Institute has never been validly passed. When, therefore, in his writ the plaintiff seeks an injunction to restrain the Institute from acting upon the footing that the poll has been validly held, he is in effect asking for an injunction to restrain the Institute from proceeding on the footing that their report and accounts for the year in question have been adopted by the Institute. But whether or not the Institute should proceed upon the

footing that that report and those accounts have been adopted, is entirely a matter of domestic concern of the Institute itself, and the matter falls precisely within the class of cases of which *Foss* v. *Harbottle* is always cited as the type. In those circumstances, it appears to me that this action is not maintainable, and I agree with the Master of the Rolls that this appeal must be allowed.

Changes and Removals.

Messrs. Amsdon, Son, Wells & Jackson, Chartered Accountants, announce that the style of their firm has been changed to Amsdon, Cossart & Wells, and that their city office has been removed to 103, Cannon Street, London, E.C.

Messrs. M. O. Beale & Co., Incorporated Accountants, intimate a change of address to 96, Victoria Street, London, S.W.

Mr. R. Byrne, Incorporated Accountant, is now practising at 16, King Street, Cheapside, London, E.C.

Mr. R. Chadwick, Incorporated Accountant, has commenced to practise at Carlton Chambers, 25, Hardshaw Street, St. Helens.

Mr. A. H. Edwards, practising under the style of Edwards & Edwards, Incorporated Accountants, at 22, High East Street, Dorchester, announces that he has taken into partnership Mr. C. Wild, A.S.A.A. There will be no change in the name of the firm.

Mr. T. A. Gittins, Incorporated Accountant, has removed his Wrexham office to 39, King Street.

Mr. A. C.W. Rogers, F.C.A., and Mr. M. C. Rogers, A.C.A., in practice as Rogers, Son & Co., announce that Mr. E. Spencer, F.L.A.A., and Mr. A. E. Townsend, A.S.A.A., have been admitted as partners. The practice will be continued under the same name, Rogers, Son & Co., at the same address, Commercial Union Buildings, Cheapside, Nottingham.

Messrs. Roth, Manby & Wolfe have removed their offices to 5 & 6 Cork Street, London, W.1.

Mr. Arnold T. Stevenson, Incorporated Accountant, announces that he has removed his offices to 188, High Street, Dudley.

Messrs. Alfred Thorp & Co., Incorporated Accountants, have removed to 7, Union Court, Old Broad Street, London, E.C.2.

Mr. M. Widdowson, Incorporated Accountant, announces that he has entered into a working arrangement with Messrs. Beatton, Hewson & Co., Incorporated Accountants. He will continue to practise under the style of Widdowson and Co., at the new address, 127/130, Moorgate Station Chambers, Moorfields, London, E.C.

Mr. Henry Morgan, F.S.A.A., has been appointed deputy-chairman of the London Chamber of Commerce.

The Stock Exchange and Other Markets.

A LECTURE delivered to the Incorporated Accountants' Students' Society of London and District by

Mr. W. J. BACK,
INCORPORATED ACCOUNTANT.

The chair was occupied by Mr. WILLIAM STRACHAN, Incorporated Accountant.

Mr. W. J. BACK said: Our subject this evening is the Stock Exchange and other markets more or less similar but different in type. Markets are the characteristic feature of the present stage of the economic system. The division of labour, when it came into our economic system, involved production for sale rather than production for use; and production for sale meant immediately that markets, in some form or other, entered into everybody's life and into every transaction. Then, too, in these days the whole world is one economic unit, so that it becomes necessary to give consideration to the working of the organised markets in the widest possible fashion, if one is to understand the movements of commerce and industry, whether as an economic study or as part of the general knowledge essential to accountants in their daily professional tasks. There are therefore markets for raw materials, markets for manufactured goods for sale and, perhaps most important of all, markets for capital. The market for capital is, of course, the Stock Exchange, or rather the Stock Exchanges throughout the country. A very important part of the study of economics is the study of the system, or the machine, as it works in a modern industrial community, and that is part of what I want to talk to you about this evening.

ORGANISED MARKETS.

It is probably correct to say that the distinguishing feature of an organised market in any commodity or in capital itself is the presence in that market of the speculator, who is prepared to do business in the hope of making profits on market turns of one sort or another. You must distinguish the speculator from the gambler; the operations are entirely different, although often one may run over into the other, and it may be difficult in regard to an individual transaction to say to which class it belongs. The function of the speculator is the professional assumption of the risks of price fluctuation—their acceptance by a body of men who make it their business to study the world situation and to consider what prices are likely to be in the immediate or more distant future.

As commerce and industry become more organised, the various functions tend to separate themselves—finance to the banks, insurance to the insurance people, and so on—and among other people the speculators on the organised markets fill this function, as I shall describe to you later on, of accepting the risk of market fluctuations; indeed their function has been defined as being the struggle of intelligence against chance, and it is possible to make out a much better case for that particular definition than perhaps at first sight appears to you.

It is the business of the speculator to become expert in the particular market in which he deals, to study all its facts and factors, to be able to forecast the movements of the market and, in forecasting those movements, to discount them and spread the effect of market price changes over a wider period, thus minimising the total

damage caused by price fluctuations. So in effect he becomes an insurer against price fluctuations. He relies for making a profit upon his superior knowledge of the market and market influences, and upon his ability to forecast the course of prices. That function is most clearly seen in some respects in the operation of jobbers on the Stock Exchange, while some other of its operations are probably more clearly seen in the great organised produce markets.

THE STOCK EXCHANGES.

First of all, let us take the Stock Exchange. The market consists in the first instance of the London Stock Exchange, acting as the hub of the wheel, then of the various provincial exchanges, of which there are a number scattered over the country, and on the outer fringe the outside brokers, having a more or less degree of respectability according to circumstances.

BROKERS AND JOBBERS.

The membership of the Stock Exchange, as you probably are aware, consists of two classes: brokers and jobbers. The broker is the man who comes into contact with the general public. He is prepared to accept your instructions to deal in any security which is quoted on the Exchange. The jobber, on the other hand, is the man who is a dealer or a speculator, having no transactions directly with the general public, specialising in a particular market and studying all the factors and influences in it, and then taking his stand with other dealers in the same market in the particular place appropriated to it by custom in the Stock Exchange. He is ready to deal, either to buy or sell—ready to sell, whether he has the security or not, and ready to buy, whether he wants it or not. Therefore the broker can go to the spot at which the market for a particular security is situated and find there some jobber who is prepared to deal in the security that his client wants to buy or wants to sell.

The jobber is a reservoir of information, often drawn upon quite considerably by brokers for their own information and that of their clients, and it is his job to be familiar with his own particular "lines."

Incidentally to students of economics and statistical methods, it may be interesting to comment here that the large brokers are setting up, or have set up, statistical departments which give very close study and publish information with regard to the particular securities in which their principals deal. For example, here is a description of one—an investment list of Canadian and American shares issued by a firm of jobbers in the American market: "It contains statistics brought up to date, giving a wealth of information concerning American industrials, public utilities and railroads, the last named divided into first and second class, and various speculative issues. A list is also provided of foreign and colonial Bonds issued in the United States." It then goes on to give other information—this is a Press notice I have been reading—with regard to that particular publication. There have been a considerable number of these issued within the last year or two, each containing a wide survey of conditions affecting the market under consideration, and they illustrate the point that the jobber's function is that of becoming an expert in the market in which he is interested, and that his expert knowledge is available for his clients, the brokers, to use for the benefit of their clients.

On the other hand, the broker on the Stock Exchange is purely an intermediary. He is prohibited by the rules of the Stock Exchange from making a price. He must not sell his own stocks to the clients without disclosure of the fact, nor must he even do what is known as a "marrying transaction" without disclosure. Suppose he has a client who sends in an order to sell and the same day he finds in his post an order from a client to buy precisely the same quantity of that particular security, joining them together would be a "marrying" transaction. This would seem the natural course to adopt, but if he does he has to disclose on his contract note the fact that the transaction was not carried through with a member of the Stock Exchange, which will immediately set his client wondering. Furthermore, he is only allowed to charge one commission; he must not charge both clients full commission, and again a client who only gets half commission charged to him begins to wonder what has happened. So he rarely takes this course. The effect of that is to leave the broker disinterested in any transaction and ensure his acting only in the interests of the public. He himself is interested only to the extent of his commission, and the amount of that commission is, of course, known and disclosed.

PROCEDURE.

Let us now consider for a moment the procedure in which these people work out their respective functions in practice. Suppose you have 1,000 shares in some industrial company and you make up your mind that you will sell 500 of them. You telephone to your broker—I am assuming it is a company whose shares are quoted on the Stock Exchange—and tell him you want him to sell 500 shares of a certain kind and you give him whatever indications you think proper as to the price at which he may sell.

Your broker will go on the Stock Exchange and find a jobber in that particular market. He will ask the jobber dealing in that class of shares to make a price. The jobber may refuse, of course, if he does not want to deal in them at all, but if he makes a price he will give two figures, at the lower of which he is prepared to buy and at the higher to sell, and once he has given that quotation he is bound, if the broker accepts his offer, to carry the transaction through. He does not know when he makes the price whether the broker wants to buy or to sell, but whichever it is he has to stand by it and deliver or receive as the case may happen to be. The bargain is made for the Account. There are 24 Account days in the year, so you will see there is one about every fortnight, and settlement takes place when the end of the Account comes.

The broker goes back to his office in due course and sends you a sold note, indicating what it is he has sold and the price and other information. The following morning the clerk of the broker and the clerk of the jobber meet in the Settling Room and agree the notes that their respective principles have made as to the bargain entered into.

Now you can see at once the advantage to everybody concerned of the presence in the Stock Exchange of a jobber prepared so to deal. In markets where jobbers are not to be found, the broker who got an order to sell 500 shares would have to find some other broker with a client prepared to buy them. Then there would be negotiations and considerable time and trouble would be taken in carrying out the instruction the client had given. During last summer there was a Commission of Inquiry in London from the New York Stock Exchange, investigating the working of the system here, and the New York Stock Exchange Committee have just issued instructions to their members the effect of which will be eventually to divide them also into brokers and jobbers, and so set up a jobbing system in America very similar to that which is in operation in London.

I said that once a jobber has made a price he has got to carry the transaction through. For example, this actually happened. A broker went to a jobber and asked him to make a price for a particular security, and he added the information that he wanted to deal in 4,000 shares. The jobber said 4s. 6d. to 4s. 7½d., which meant, of course, 4s. 6d. to buy and 4s. 7½d. to sell. The broker said, "I am a buyer, but make it a little cheaper." He was therefore obviously interested in the 4s. 7½d. quotation. The jobber said, "All right, I will sell you 2,000 at 4s. 6¾d. and 2,000 at 4s. 7½d." You can average that out. The broker considered for a moment and then said, "I will buy that first 2,000 at 4s. 6¾d. and leave the second 2,000 alone." And the deal went through. The offer had been made and the offer was accepted. It was not stated in the offer that the first 2,000 was conditional upon the second 2,000, so one 2,000 was bought and, as far as I know, the second 2,000 still remains open.

Let us return to our transaction. The 500 shares we are assuming you have sold may change hands several times during the Account. The jobber to whom your broker has sold may sell them again, and they may change hands several times, or they may get split up, during the Account. When the day of Account comes, the last buying broker makes out a ticket with the name and address of his client, the last price—the price his client is paying—particulars of stamp duty, and so on, and then the ticket passes from hand to hand back to the original seller. Some of these tickets pass through a very considerable number of hands in a very busy market at the time of a boom, when there are frequent transactions. The seller's broker prepares the transfer deed, setting out that one party sells to the other party for a certain specified consideration certain specified shares in a particular company. You should bear in mind the fact that if you happen to be the first seller, the price that appears in the transfer deed which you are asked to execute may not be the price at which you have sold. If there have been several transactions you may actually complete the transfer deed setting out that the sale has taken place at some figure other than that you are going to receive, because it will be the figure to be paid by the last buyer which will appear on the document.

Certification of Transfers.

When the selling broker has prepared the transfer, you, the actual seller, will sign it and he will get you to hand over to him your certificate for the shares you hold and of which you have now sold a half. Obviously he will not attach the certificate to the transfer deed, because your certificate is for 1,000 shares. The procedure is to obtain certification of the transfer deed. He sends the certificate along to the office of the company, and the secretary or registrar of the company certifies in the margin of the transfer deed that the certificate for the within-named shares—that is, the 500 shares you have sold—has been deposited in the office of the company. It then becomes a certified transfer and is good delivery on the Stock Exchange and passes in exchange for cash to the parties entitled.

You may remember that a few years ago there were several famous cases, in which a gentleman called Clarence Hatry took some part, and one of them went to the House of Lords as to the certification of transfer deeds. The point was that the registrars in that case, one of the Hatry companies, had certified that there had been deposited with them certificates for a certain number of shares which, in fact, had not been so deposited, and the question that arose in the end was which of two innocent parties should lose the value of the shares purported to have been sold but which, in fact, were not owned by the seller in the case. The decision of the House of Lords was that the registrar or secretary could not be presumed to have authority from the company to commit a fraud and therefore the company was not responsible for that false certification by the registrar.

Since that time the practice of certifying transfer deeds by the Stock Exchange within the Stock Exchange has been very considerably developed, and nowadays the certification of a great many securities is done in the Stock Exchange itself, whether the London Stock Exchange or the provincial exchanges. Most, if not all, of the provincial exchanges will certify transfers; they then send the share certificate to the company. They of course charge a fee for doing this service, so you may get transfer deeds certified by the company and/or transfer deeds certified by one or other of the stock exchanges.

The certified transfer is then exchanged for cash as between the Stock Exchange members and passes down the line until it finds the ultimate owner. The buyer pays transfer fees and stamp duty. He is also charged with contract stamps. There is now in the Exchange a clearing system being developed and extended, and working very much on the lines of the Bankers' Clearing House, so saving a good deal of the tracing of transactions by way of passing tickets down a long line of dealers from the last buyer to the original seller.

Newspaper Quotations.

You will have seen in the newspapers quotations of prices at which shares have been dealt in on the Stock Exchange the previous day, and that will have brought to your mind the fact that there is provision made for the registration of bargains in the Stock Exchange, so that there may be a record maintained of the general trend and the volume of business done day by day. But in reading those quotations, you should have in mind that the marking is optional only. Brokers and jobbers are not bound to register their bargains; they may register them. Furthermore, either or both may register them, so the same bargain may be entered twice, once by the broker and once by the jobber. There is no indication of the quantity of stock dealt in, and therefore a number of quite small transactions may make the market quotation look as if there was considerable activity when there was not. Moreover, bargains are not necessarily registered in order. A jobber, finding himself busy in the morning, may leave the registering of all his morning's bargains until late in the afternoon, and people looking at the list of transactions may think they have all taken place in the order quoted. Other brokers may have had much later bargains marked at an earlier point before this particular jobber came along with his list. There is a certain amount of complaint and sense of dissatisfaction with the marking system as it operates on the Stock Exchange, and I understand there is a committee enquiring into it at the present time with a view to making recommendations which may make the marking system more satisfactory to the general public and the Exchange itself.

The "New" Capital Market.

So much for the transactions in old capital—capital that has already been issued. The Stock Exchange is a market for new capital as well as for old capital. In order to make an issue of new capital marketable you have to obtain permission to deal from the Stock Exchange Committee. In order to obtain that there are a series of regulations, to be found in Rule 159 (A.4) of the Stock Exchange Rules, to be complied with. Generally speaking

there may be issues of capital in three forms. You may have a prospectus issue by the company, whereby the company prepares an ordinary prospectus setting out that it is offering certain shares for acceptance by the public, the bargain being completed in that fashion. Secondly, there may be an offer for sale by the purchaser of a block of shares, who prepares a document very like a prospectus called an "Offer for Sale," and sends it out to the public and obtains their offer to buy some of the shares he has taken over from the company. Thirdly, there may be what is called private introductions or market introductions. In this case there will be no prospectus or offer for sale. Somebody—an issuing house possibly—gets a block of shares from a company as a wholesale dealer and then proceeds to do what is called "making a market" in them—that is to say, to interest the public in them, and then sell them in smaller lots on the Exchange at prices which vary from day to day according to market circumstances and the popularity of the particular issue.

In either of those cases they have to begin by getting the permission of the Stock Exchange Committee for dealings in the security. In order to obtain that, they give the committee various information, which includes prospectus matter, and also copies of agreements for the issue of shares credited as fully paid up other than for cash, and other contracts named in the prospectus as being material contracts, and the committee will require that certain particulars shall be advertised.

When the company or the seller of shares has made an issue, the public desiring to participate will complete application forms and send them in with the application money. Their names will be listed and the directors will set to work and make an allotment. Allotment letters will then be sent out to the general public who have received allotments. Those allotment letters will set out that in response to their application they have been allotted a certain number of the specified share issue, and will give further particulars as to payment of allotment moneys, and so on.

On the back of those forms you will invariably find renunciation forms, as they are called; that is to say, a form which, on being completed by the person to whom allotment is made, transfers his right to that particular allotment to some other party. In most cases also arrangements may be made for an allotment to be split, so that a man may sell his particular allotment in several smaller quantities. As soon as allotment letters are issued the market begins to deal in them. The renunciation form on the back is completed in blank, leaving open the name of the person who is to be registered as the proprietor, and the allotment letters so endorsed pass from hand to hand until they come into the possession of a person who desires to be registered as the holder of the shares. He fills his name in and duly passes the document to the company or the registrars for registration.

Those forms have to be stamped, but they escape *ad valorem* stamp duty on consideration money, which has to be paid on a transfer of shares, because this is not a transfer of shares. The party to whom a right of allotment has been made does not necessarily become a member of the company. You will remember that the Companies Act says that a person becomes a member of the company on applying for shares and having his name entered on the register. In the case of the renunciation of an allotment, the allottee never has his name registered and consequently never becomes a member, and does not have to pay *ad valorem* duty on the transfer of the allotment. It is not in fact a transfer of shares but the transfer of the right to an allotment of shares.

You will appreciate, in relation to new issues or old capital, the importance of there being a liquid market on the Exchange, and you will realise that a market is liquid and remains liquid just because there are persons called jobbers—speculators on the Exchange—prepared either to buy or sell and so to keep the market open for the purposes of the general public.

ORGANISED PRODUCE MARKETS.

Another side of the same kind of transaction is seen in the position and procedure in other organised markets—markets for such things as wheat and cotton and, to a lesser extent, tea, coffee, and so on.

The difficulty of organised marketing is the maintenance of a standard of quality. It will be clear to you that the Stock Exchange security is an ideal subject of a marketing arrangement, because every share of a particular class in a particular company is of precisely the same value as any other similar share. But in other commodities, such as manufactured goods, produce, or even coal, it is exceedingly difficult to get the same kind of assurance as to identity of quality. Coal may be cut from the same seam and be of very different quality. It is therefore necessary, before you can have an organised market, to have a general standard of quality by reference to which sales may take place—a general standard guaranteed or certified by somebody recognised by both buyers and sellers as giving a reliable certificate. In appropriate cases governments and associations take this in hand, *e.g.*, there is Government grading for wheat for various parts of the world, and for cotton.

There are two main divisions in the operations in the organised produce markets. First of all, there are the transactions in regard to the immediate or the deferred sale of the commodity, where an actual sale and delivery of the quantity sold is contemplated; and, secondly, there are the hedging and speculative transactions—options and futures, and that kind of thing—where it is not usually contemplated that actual delivery of the commodity will take place, although, of course, it may take place if it suits the parties concerned.

A COTTON TRANSACTION.

Let us take cotton as a specific example. The grain markets are very similar in their working to the cotton markets. The cotton grower in, let us say, the Southern States of the United States, sells his cotton for cash to a travelling dealer, who in turn sells it on one of the American exchanges. We may assume, for our present purpose, that that sale takes place to a merchant with the intention of it being shipped to Liverpool and sold upon the Liverpool Cotton Exchange. The U.S. Department of Agriculture, in conjunction with the Liverpool Cotton Association, have established certain standard grades by which cotton may be described, so you may (without inspection or samples) buy cotton in Liverpool or London graded to a certain specified quality.

The American, by custom, sells to Liverpool on drafts of 60 or 90 days sight. Let us say in this case it is 60 days. But having paid cash for his original purchase, he wants to turn over his money as rapidly as possible. The cotton season is very short—three or four months at the outside—and unless a man has a very large capital he cannot earn a living if he has to wait for 60 days for his money. Therefore he wants a bill he can discount in the United States and so get his money back again. The practice is for the Liverpool merchant to make an arrangement with his banker at the beginning of the season for accommodation up to whatever amount may

be justified by his own resources and by special circumstances. Let us say it is for £50,000. It will, in turn, be secured on the cotton which he has shipped from one centre to another.

Accordingly the American draws a bill on Liverpool but not on the trader who has bought the produce; he draws it on the Liverpool banker and then attaches the shipping documents—bills of lading, and so on—to the bill. He is then able to sell that bill, with the documents attached, to a new York banker, or arrange to discount it. The New York banker who has obtained the bill sends it to his London correspondent, who presents it to the banker on whom it is drawn, with the documents attached to it. The banker, having examined the bill, and having got his customer to examine the shipping documents attached, accepts the bill, detaches the shipping documents and passes the bill back to the London agents of the U.S. bank. The bill by that time is, of course, a first-class-bill, having on its back the name of a bank. The London correspondent of the New York bank will usually discount the bill in the London discount market, and be able to remit the proceeds to his American principal at once.

You will realise that the operation I have been talking about is the one that is represented in the balance sheet of banks by the statement on both sides "Acceptances on behalf of Customers," because the acceptance appears on one side as a liability and on the other side as an asset—the liability of the bank's customer to pay the amount of the bill over to the bank in due course. The bank has made itself responsible to pay the sum of money represented by the bill and to pay it at a certain future date. It has as security the documents which will entitle it to take possession of the cotton when it comes to hand.

"HEDGING."

But between, let us say, October, when the transaction takes place, and January, when the bill falls due, the price of cotton may fluctuate very considerably, so the bank wants protection against that fluctuation. It obtains it by requiring that the security shall be "hedged," as it is called. The dealer is required to hedge his cotton, and the hedging of the cotton is usually one of the terms on which banks agree to grant accommodation for this class of business.

What the dealer does is this. He goes into the futures market and sells options or futures for a similar amount of cotton to that which he has got coming forward. Suppose the merchant has bought 100 bales of cotton in October, which is on its way across and which he expects to sell in November or December, he will go into the market and sell 100 bales of cotton futures, and so he covers the operation. He has purchased the cotton in America and sold futures—that is to say, sold 100 bales of cotton, which he has not got, for future delivery in, perhaps, January. What happens is that the price of futures and the price of spot cotton will move in line. If one fluctuates upwards the other will do the same; if downwards, then again the other will do the same. Therefore if the value of cotton on the water is falling, the price of options in Liverpool will similarly be falling.

When the cotton arrives, the merchant closes out his options by buying 100 bales of futures and setting the 100 bales he has now bought against the 100 bales he has sold before. If the prices have fallen, it follows that he can now buy at a lower price than the price at which he sold before, and he is able to close his contract at a profit. The converse thing will have happened on his cotton, and the offset of the profit on the option against the converse loss on the cotton itself will bring the value of the cotton, when he gets it, to the price at which he can obtain spot cotton. And so the bank, by insisting on hedging, has taken the transaction out of the speculative character and has put the risk of fluctuation in prices away from itself and its client on to the market; that is to say, on the speculators who are operating in futures.

You will realise that the traders in options are in precisely the same position as jobbers on the London Stock Exchange. It is the same kind of operation. They also have studied the crop reports prepared and issued by the American Government and such other sources of information as they have regarding cotton coming forward. They have kept a close watch on cotton happenings in all parts of the world, they have become experts in the whole business of the marketing of cotton and their expert knowledge of what is likely to happen puts them in a position to forecast the possible trend of markets, and the prices at which they are prepared to buy or sell futures enables them to make use of that knowledge and earn a living.

The merchant is protected by what is called the "hedge" which he has put round his transaction, and has thrown his risk on the market. That is a very valuable operation. So the cotton spinner who has a contract to deliver yarn several months ahead will cover himself by hedging, and the flour miller who has contracts to sell flour in the future or has bought wheat ahead will cover himself by dealings in options. It is really important, in view of the fact that you might, at any time, be engaged upon an audit in which there are dealings of this kind, that you should understand the operations.

SELLING THE COTTON.

Let us now return to the story of our cotton sale. When the cotton arrives, the bank will be in possession of the documents of title that would enable it to go down to the dock and collect the cotton, but of course its customer is the man who wants to sell it. Accordingly the bank hands over those documents of title under what is known as a letter of trust—that is, a letter sent by the customer providing for the payment to the bank of the proceeds of the sales as and when he makes them. That enables the bank to retain control over the customer, and if he does anything else with the proceeds he commits a criminal offence. The bank has the goods stored in its own name and it issues delivery orders which enable it to retain control also over the cotton.

CONCLUSION.

From this description you will have seen the general line of the operations of these highly organised markets: the capital market—the London Stock Exchange and other Stock Exchanges throughout the country—and the produce markets, of which I have discussed one, covering broadly the lines on which the others operate. You will see that several essentials are necessary before markets can be organised in that fashion. First of all, the supply of the articles in question must not be capable of rapid expansion or contraction with any change in the market; secondly, the identity of quality of the article must be unvarying, or there must be a system of certifying and grading which provides a standard by which the commodity, when it is delivered, may be measured; and thirdly, there must be information available, either to the general public, as in regard to company shares, or through crop reports and other information in regard to produce markets, which enables the speculator to have a real basis on which he can work and delivers him from being purely a guessing machine—in other words, from gambling.

Discussion.

The CHAIRMAN: I am sure you must all have admired Mr. Back's graphic description of the operation of the cotton market, which he selected as an example of one of the produce markets. The information he has conveyed you would not find in a book and I think the way in which he has brought out the various points must have appealed to you all. If there are any questions you would like to ask, I am sure Mr. Back will be pleased to answer them.

Mr. F. R. WITTY, Incorporated Accountant: I was rather interested to see how Mr. Back distinguished between speculating and gambling. It does seem to me that gambling is really just an abuse of legitimate speculation, and so far as I can see under the present system, where you allow legitimate speculation, it is practically impossible to prevent this abuse. I should like to know Mr. Back's opinion as to whether it is possible for any sort of Governmental control to take place in regard to this speculation.

Mr. BACK: I do not think it is. As Mr. Witty has said, the line between gambling and legitimate speculation is very fine. It is impossible to define; and it is impossible, I think, to conceive of any regulations or circumstances that will shut out the gambler while leaving the speculator in a position to fulfil his proper function. As it is the business of the speculator to assume the risks of fluctuation, it seems to me to be impossible for any Government Department, operating with public moneys, properly to accept that risk and to take his place. It appears to me that in the present economic system he fills a very useful function and it is a function best left to the private individual, even though it may involve orgies of gambling at certain times and in certain circumstances.

Mr. F. E. GILKS: On the point raised by the previous speaker, I should like to make the suggestion that speculators ought to be confined, if possible, to certain classes of stocks. I have heard it mentioned that the recent depreciation in gilt-edged stocks was a designed campaign by certain groups of speculators, and it seems most extraordinary that large sums of money should be lost and gained in dealing with a national security. Is it not the case rather that speculators in those securities do not attempt to forecast the course of prices, but endeavour to dictate the course of prices and profit thereby? With regard to Mr. Back's explanation concerning futures, I take it that when the hedging sale has been made, the purchaser who has made this sale waits until the original contract for his first purchase is due to be met, and then makes a further purchase of a future. He sets one against the other.

Mr. W. N. SMITH: In the case of share Introductions to the market, does the information get to the public in the same way as Placings on ordinary Issues?

Mr. BACK: The Stock Exchange Committee require it to be published in two London morning dailies and you get the information from them. It is practically the same information as in a Prospectus.

Mr. J. E. SPARROW: May I ask Mr. Back to tell us whether he considers that the operations in the *Pepper* case were speculation gone completely into the realm of gambling? Was that a question of the market being exploited entirely for gambling?

Mr. BACK: The circumstances there were these. White pepper is a commodity of which there is a very small annual production and a very small annual usage, and the operators believed they could get control of the whole world supply. If they could have done that they would have been able to have forced the price up to a figure that would have shown them very handsome profits. Of course, the facts were that they did, but they overlooked the technical skill of certain operators who were able to turn black pepper into white by chemical means and so increase indefinitely the quantity of white pepper by adding to it the black pepper. Pepper kept on coming to the market, because somewhere—over in China, I believe—some gentleman or group of gentlemen turned black pepper into white pepper and so spoiled the whole game.

A STUDENT: Do you think the economic function of levelling out prices justifies the existence of the Stock Exchange, especially where you have so much gambling?

Mr. BACK: The existence of the Stock Exchange is justified by the fact that everybody who has investments desires that they should remain liquid; he wants a market in which he can sell them. And everybody who has money he has saved and wants to invest, desires a place to which he can go and buy the particular securities he chooses. That is the justification—the need for a market. The speculator or jobber is essential to the liquidity of the market and is an integral part of its machinery. Whether the Stock Exchange is essential or not depends on the order of society. In the present order of society it is essential.

Mr. W. N. SMITH: May I ask a further question? In connection with the broker going to the jobber and asking for a price, is it not absolutely necessary for him to state the quantity of shares involved? The amount of stock to be bought or sold may influence the jobber as to what price he gives.

Mr. BACK: The answer to that is that if he does not state the quantity, then the price made has certain limits. There are certain limits of quantity understood on the market and if you want larger transactions you have to state the quantity. And, of course, the jobber can always ask if he wants to.

Mr. G. ROBY PRIDIE, Incorporated Accountant: I would like Mr. Back to give a little more information with regard to how one obtains the right to sign a renunciation of an allotment. He mentioned that one who so renounces is not a member of the company. Where does he get his rights from? Has he made an application for an allotment and then passed it on, without taking up his membership? There are instances, of course, where he obtains his right in the case of a reorganisation of the company as a member of the old company. The members of the old company have certain rights with regard to their holdings and get either an additional allotment or a different type of allotment. In that case the person signing a renunciation obtains his title in that way. Is there any other method by which a man gets his title?

Mr. BACK: The procedure is that a person receives a prospectus and with it a Form of Application. He fills up that form, which applies to the company to allot him certain shares. The company sends him notice that it is prepared to allot those shares, or part of them. That constitutes a contract. The company is bound now to allot those shares to him if he requires them. But by the Companies Act he only becomes a member when he is put on the register, and that is not written up perhaps for a couple of months after the public issue. During that period he is not in possession of a certificate, but only a Letter of Allotment which is a contractual right to obtain allotment. He transfers that right by his renunciation and some other party obtains the right. That is why he can sell it without *ad valorum* duty—because he has not become a member and he is not selling shares, but the right to shares.

Mr. A. A. C. HERON: In connection with Mr. Back's last statement, does not a Letter of Allotment say that shares have been allotted? It is not a question of being prepared to allot them.

Mr. BACK: That is quite right, but in law the allotment is not complete until the entry is on the register. The prospectus sets out as one of the conditions that definite share certificates will be issued on or about a certain date, which is equivalent to a statement that the register will be written up on or about that date.

Mr. J. L. BRAY: I would like to ask Mr. Back a question about operations on the Stock Exchange. Suppose that a company, formed by an unscrupulous body of men, has exploited a gold mine in which there is perhaps very little gold. They give instructions to their brokers to buy up all the shares of the company coming on the market when they have been issued to the public and so force the price up on the Stock Exchange. They are then able to sell their shares at a large profit. How can such operations be controlled by the Stock Exchange Committee?

Mr. BACK: That is what is known as "rigging the market." It can be done if you have money enough and if you are successful. Sometimes, of course, operators in that kind of performance get caught and do not succeed in getting the price up. Whether the price goes up or not depends on psychological factors. They publish such information as they may, but information is coming to the market from other sources as well, and it is not nearly so easy to force the price up as at first sight it may be thought to be. Of course, you have to have sufficient money to buy all the shares, and if the company is of any size that means the investment of very considerable sums and taking very considerable risks. Rigging the market is possible and to a limited extent is done, but it is very difficult to do to anything like the extent you have suggested.

On the motion of Mr. Desbottes, a hearty vote of thanks was accorded to Mr. Back for his lecture, and a similar compliment was paid the Chairman for presiding.

FINANCE BILL IN COMMITTEE.

The New N.D.C. Clauses.

Mr. M. BEAUMONT (Aylesbury) moved an amendment to ascertain from the Chancellor of the Exchequer whether any profits taxable under Schedule A were subject to the N.D.C. and, if they were, how they were to be assessed. Schedule A, he said, was a property tax.

Sir J. SIMON said that for this purpose it would be a mistake to get themselves tied up with references to Schedule A. The profits would be assessed as though they were profits which, for income tax purposes, came under Schedule D. For example, a company holding blocks of premises, either business premises or residential flats, would be regarded for the purpose of this tax as carrying on a business, and their rents would be assessable in the same way as the profits of a business which fell under Schedule D. The tax would fall on those rents within the period after deduction of expenses.

Mr. DENMAN (Leeds) moved an amendment to provide that the exemption from the tax of statutory undertakers in the United Kingdom should be extended to statutory undertakers operating elsewhere in the British Empire.

Sir J. SIMON said he had come to the conclusion that this amendment should be accepted. The loss to the revenue by making the concession would be a small matter. The great mass of public utility undertakings in the Empire would not in any case be caught by this tax, which would apply only to certain companies owned here and operated in Empire countries under British financial control. It must be understood, however, that in cases that were open to doubt undertakings claiming exemption would have to prove that they were restrained in the manner defined. But he would find it impossible to exempt such enterprises all over the world. He knew that there were public utility and other undertakings which operated in foreign countries through companies domiciled here, but he could not possibly include them in the concession. One reason for that was that we were in a better position to know and test our own Commonwealth law than the law of foreign countries.

Mechanical Accounting.

The Incorporated Accountants' Research Committee has appointed a sub-Committee on Mechanical Accounting. The members of the sub-Committee are: Mr. W. J. Back, Mr. R. N. Barnett, Mr. J. J. Elsden, Mr. D. Mahony, Mr. Bertram Nelson.

The sub-Committee would greatly appreciate hearing from anybody interested in the subject of Mechanical Accounting. Communications should be addressed to The Secretary, Incorporated Accountants' Hall, Victoria Embankment, London, W.C.2.

FINANCE ACT, 1937.

The following are the provisions of the Finance Act in so far as they relate to Income Tax and National Defence Contribution:—

PART II.

Income Tax.

10.—(1) Income tax for the year 1937-38 shall be charged at the standard rate of five shillings in the pound, and, in the case of an individual whose total income exceeds two thousand pounds, at such higher rates in respect of the excess over two thousand pounds as Parliament may hereafter determine.

(2) All such enactments as had effect with respect to the income tax charged for the year 1936-37 shall have effect with respect to the income tax charged for the year 1937-38.

HIGHER RATES OF INCOME TAX FOR 1936-37.

11. Income tax for the year 1936-37 in respect of the excess of the total income of an individual over two thousand pounds shall be charged at rates in the pound which respectively exceed the standard rate by amounts equal to the amounts by which the rates at which income tax was charged in respect of the said excess for the year 1935-36 respectively exceeded the standard rate for that year.

PREVENTION OF AVOIDANCE OF TAX BY CERTAIN TRANSACTIONS IN SECURITIES.

12.—(1) Where the owner of any securities (in this and the next following subsection referred to as "the owner") agrees to sell or transfer those securities, and by the same or any collateral agreement—

(*a*) agrees to buy back or re-acquire the securities; or

(*b*) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities;

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the following provisions shall have effect—

(i) the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of the Income Tax Acts to be the income of the owner and not to be the income of any other person; and

(ii) if the securities are of such a character that the interest payable in respect thereof may be paid without deduction of tax, the owner shall be chargeable to tax at the standard rate under Case VI of Schedule D in respect of the interest which is deemed to be his income as aforesaid, unless he shows that it has borne tax at the standard rate.

(2) The references in the last foregoing subsection to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired.

(3) Where any person carrying on a trade which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—

(*a*) agrees to sell back or re-transfer the securities; or

(*b*) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of the Income Tax Acts the profits arising from or loss sustained in the trade.

(4) The last foregoing subsection shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(5) This section shall not apply to any transaction where the relevant agreements were made before the sixth day of April, nineteen hundred and thirty-seven.

(6) For the purpose of this section—

(*a*) the expression "interest" includes a dividend;

(*b*) the expression "securities" includes stocks and shares;

(*c*) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(7) The Commissioners of Inland Revenue may by notice in writing require any person to furnish them within such time as they may direct (not being less than twenty-eight days), in respect of all securities of which he was the owner at any time during the period specified in the notice, such particulars as they consider necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities, and, if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding fifty pounds and after judgment has been given for that penalty to a further penalty of the like amount during every day on which the failure continues.

AMENDMENT AS TO RELIEF IN RESPECT OF LOSSES.

13. For the purposes of section thirty-four of the Income Tax Act, 1918 (which relates to relief in respect of certain losses), the amount of a loss sustained in a trade shall, in all cases, be computed in like manner as the profits or gains arising or accruing from the trade are computed under the rules applicable to Case I of Schedule D:—

Provided that—

(*a*) nothing in this section shall affect the provisions of paragraph 2 of Rule 15 of the Rules applicable to Cases I and II of Schedule D (which relates to losses of assurance companies carrying on life assurance business); and

(*b*) where relief is claimed by virtue of this section in respect of a loss sustained in a trade which consists wholly or partly in dealing in securities, section twelve of this Act shall apply, for the purpose of computing the amount of the loss, as if subsection (5) thereof were omitted therefrom.

AMENDMENTS OF 12 & 13 GEO. 5, C. 17, S. 21.

14.—(1) Notwithstanding anything in subsection (6) of section twenty-one of the Finance Act, 1922, a company which is deemed for the purposes of that subsection to be under the control of not more than five persons shall not be deemed to be a subsidiary company, unless it can be deemed to be under the control of not more than five persons only by including among the persons mentioned in paragraph (*a*), (*b*) or (*c*) of subsection (1) of section nineteen of the Finance Act, 1936, or in subsection (3) of section twenty of that Act, a company to which the provisions of the said section twenty-one do not apply and which is not the nominee of any other person.

(2) In the case of a company to which section twenty-one of the Finance Act, 1922, applies, being an investment company, the following provisions shall have effect:—

(*a*) the Special Commissioners may, if they think fit, give a direction under subsection (1) of that section if it appears to them that the company has not within any year of assessment distributed to its members, in such manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of surtax, a reasonable part of its actual income from all sources for that year;

(*b*) in determining for the purpose of this subsection whether the company has or has not distributed as aforesaid a reasonable part of its actual income from all sources for any year of assessment, the Special Commissioners shall deem all the said income to have become available for distribution as soon as it became due and payable to the company;

(*c*) where an order has been made or a resolution passed for the winding up of the company, the Special Commissioners may, if they think fit, treat either of the following periods, that is to say,—

(i) the period from the end of the last year or other period for which accounts of the company have been made up to the date of the order or resolution; or

(ii) the period from the end of the last year of assessment to the date of the order or resolution;

as if it were a year of assessment for the purposes of this subsection;

(*d*) for the purposes of this subsection, the provisions of section twenty-one of the Finance Act, 1922, and any other enactment relating thereto shall apply as if a year of assessment, or a period which by virtue of this subsection is treated as a year of assessment, were a year or period for which accounts of the company have been made up, but subject to the modifications set out in the Third Schedule to this Act.

(3) Where a direction is given under subsection (1) of section twenty-one of the Finance Act, 1922, with respect to an investment company, the Special Commissioners, in determining the respective interests of the members for the purpose of apportioning income in accordance therewith under paragraph 8 of the First Schedule to that Act, may, if it seems proper to them so to do, attribute to each member an interest corresponding to his interest in the assets of the company available for distribution among the members in the event of a winding up.

(4) In this section and in any other provisions of this or any other Act relating to section twenty-one of the Finance Act, 1922, the expression "investment company" shall have the same meaning as in section twenty of the Finance Act, 1936, and any references to the date of the order or resolution for the winding up of a company shall be construed—

(*a*) in the case of a company within the meaning of the Companies Act, 1929, or the Companies Act (Northern Ireland), 1932, as references to the time of the commencement of the winding up; and

(*b*) in the case of any other body corporate, as references to the time of the making of the order, or of the passing of the resolution, or of the signing of the instrument, or of the making of the application, or of the doing of the act, as the case may be, which initiates the winding up of the body corporate.

(5) The provisions of this section shall have effect for the purposes of assessment to surtax for the year 1935-36 and subsequent years :

Provided that the provisions of subsection (2) of this section shall not have effect for the purposes of assessment to surtax for the year 1935-36 in relation to any company which before the twenty-first day of April, nineteen hundred and thirty-seven, made up accounts for a period ending in the year 1935-36.

ALLOWANCE FOR DEPRECIATION OF MILLS, FACTORIES, ETC.

15.—(1) In computing for any year of assessment the amount of profits or gains arising or accruing from any trade the profits of which are chargeable to tax under Case I of Schedule D, there shall be allowed a deduction of an amount hereafter provided in respect of the depreciation of any premises being mills, factories or other similar premises, wherever situate, which, during the period of computation, are owned by the person carrying on the trade and occupied by him for the purposes thereof.

(2) Where the premises—

(*a*) are assessable to tax under No. I of Schedule A ; and

(*b*) do not consist of or comprise electricity works or brickworks ;

the amount of the deduction to be allowed under this section shall be an amount equal to the repairs allowance of the premises, or an amount equal to the appropriate fraction of the rating value of the premises, whichever is the less ; and for the purposes of this subsection the appropriate fraction of the rating value shall be taken to be, in the case of premises situate in the administrative county of London or in Scotland, one-sixth, and, in the case of other premises, one-fifth, of the rating value.

(3) Where the premises—

(*a*) are not assessable to tax under No. I of Schedule A ; or

(*b*) consist of or comprise electricity works or brickworks ;

the amount of the deduction to be allowed under this section shall be an amount equal to one per cent. of the actual cost to the person carrying on the trade of any building (including the site thereof) which forms part of the premises being either—

(i) a building which contains, and is used wholly or mainly for the purpose of operating, machinery worked by steam, electricity, water or other mechanical power ; or

(ii) a building the depreciation of which is substantially increased by the operation of machinery so worked on the premises in any such building as is mentioned in paragraph (i) of this subsection :

Provided that no non-rateable machinery within the meaning of section twenty-two of the Finance Act, 1936, shall be deemed to form part of a building for the purpose of this subsection.

(4) Where the period of computation is less than twelve months, or the premises are not owned by the person carrying on the trade and occupied by him for the purposes thereof for the whole of the period of computation, the deduction to be allowed under the foregoing provisions of this section shall be proportionately reduced ; and where in the course of the period of computation there has been any alteration of the premises, or of the repairs allowance or rating value thereof, the amount of the deduction to be allowed under this section shall be the aggregate of the amounts of the deductions which would have been allowable thereunder if each part of the period of computation, before and after the alteration, had itself been a period of computation.

(5) A person occupying any premises as the tenant thereof shall be treated for the purposes of this section as if he were the owner thereof if, under the covenants to repair contained in the lease or agreement by virtue of which he occupies the premises the whole of the burden of any depreciation of the premises falls upon him.

AMENDMENT AS TO DISCOUNT ON TAX PAID IN ADVANCE.

18. Section one hundred and fifty-nine of the Income Tax Act, 1918 (which provides for an allowance of discount on tax paid in advance under Schedule D), shall be amended by inserting at the end thereof the following subsection :—

> " (2) The Commissioners of Inland Revenue may, on application made to them in writing within one month from the date of such a payment in advance by any person, repay to him the amount of any allowance which might have been made to him under this section if he had made a request therefor at the time of the payment."

PART III.

National Defence Contribution.

19.—(1) There shall be charged, on the profits arising in each chargeable accounting period falling within the five years beginning on the first day of April, nineteen hundred and thirty-seven, from any trade or business to which this section applies, a tax (to be called the " national defence contribution ") of an amount equal to five per cent. of those profits in a case where the trade or business is carried on by a body corporate and four per cent. of those profits in any other case.

(2) Subject as hereafter provided, the trades and businesses to which this section applies are all trades or businesses of any description carried on in the United Kingdom, or carried on, whether personally or through an agent, by persons ordinarily resident in the United Kingdom.

(3) The carrying on of a profession by an individual or by individuals in partnership shall not be deemed to be the carrying on of a trade or business to which this section applies if the profits of the profession are dependent wholly or mainly on his or their personal qualifications :

Provided that for the purpose of this subsection the expression " profession " does not include any business consisting wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts.

(4) Where the functions of a company or society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this section to be a business carried on by the company or society.

(5) This section shall not apply to any trade or business carried on by statutory undertakers and consisting wholly or mainly in the rendering in the United Kingdom or a Dominion as defined in section twenty-seven of the Finance Act, 1920, of any of the following services, namely :—

(*a*) the supply of water, gas, electricity or hydraulic power ;

(*b*) the provision or maintenance of a canal, or other inland waterway, or a harbour, dock, quay, pier, road, bridge, ferry or tunnel ;

(*c*) the conservancy of a river ;

(*d*) the carriage of goods or passengers by railway or the carriage of passengers by road, or the carriage of goods by canal or inland navigation.

For the purposes of this subsection and any other provision of this Act relating to the national defence contribution—

(i) the expression "statutory undertakers" means any local or public authority authorised by or by virtue of any enactment to render any of the services aforesaid in the United Kingdom or a Dominion as defined in section twenty-seven of the Finance Act, 1920, and any other person so authorised who is precluded by or by virtue of any enactment from charging any higher price for those services than that authorised by or by virtue of the enactment or, in the case of a body corporate, is either so precluded or precluded by or by virtue of any enactment from paying a dividend at any higher rate, or distributing by way of dividend any greater amount, than that authorised by or by virtue of the enactment;

(ii) the expression "pier" means a pier wholly or mainly used for loading or unloading goods or embarking or disembarking passengers.

(6) This section shall not apply to the business carried on by the British Broadcasting Corporation.

(7) If the Commissioners appointed for the purposes of the Special Areas (Development and Improvement) Acts, 1934 and 1937, certify that, for the purpose of inducing any persons to establish an industrial undertaking in any of the special areas, it is expedient that those persons, in addition to being provided with financial assistance under section three of the Special Areas (Amendment) Act, 1937, should be given relief in respect of any national defence contribution which may become chargeable in respect of the profits of the undertaking, the Treasury may agree to remit the whole or any part of any national defence contribution so chargeable.

COMPUTATION OF PROFITS AND ACCOUNTING PERIODS.

20.—(1) For the purpose of the national defence contribution the profits arising from a trade or business in each chargeable accounting period shall be separately computed, and shall be so computed on income tax principles as adapted in accordance with the provisions of the Fourth Schedule to this Act.

For the purpose of this subsection the expression "income tax principles" in relation to a trade or business means the principles on which the profits arising from the trade or business are computed for the purpose of income tax under Case I of Schedule D_4 or would be so computed if income tax were chargeable under that Case in respect of the profits so arising.

(2) For the purpose of the national defence contribution, the accounting periods of a trade or business shall be determined as follows:—

(*a*) in a case where the accounts of the trade or business are made up for successive periods of twelve months, each of those periods shall be an accounting period;

(*b*) in a case where the accounts of the trade or business have been made up as aforesaid but have ceased to be so made up, the accounting periods from the end of the last period of twelve months for which they were so made up shall be such periods not exceeding twelve months as the Commissioners of Inland Revenue may determine;

(*c*) in any other case the accounting periods of a trade or business shall be such periods not exceeding twelve months as the Commissioners of Inland Revenue may determine;

and the expression "chargeable accounting period" means—

(i) any accounting period determined as aforesaid which falls wholly within the five years beginning on the first day of April, nineteen hundred and thirty-seven; and

(ii) in a case where any such accounting period falls partly within and partly without the said five years, such part of that period as falls within those five years.

(3) Where a chargeable accounting period is not a period for which the accounts of the trade or business have been made up, such division and apportionment to specific periods of the profits and losses for any period for which the accounts relating to the trade or business have been made up, and such aggregation of any such profits or losses or any apportioned part thereof, shall be made as appears necessary to arrive at the profits arising in the chargeable accounting period.

(4) Any apportionment under the last foregoing subsection shall be made in proportion to the number of months or fractions of months in the respective periods, unless the Commissioners of Inland Revenue having regard to any special circumstances otherwise direct.

EXEMPTION AND ABATEMENT IN RESPECT OF MINIMUM PROFITS.

21.—(1) Where the profits arising in any chargeable accounting period from a trade or business do not exceed two thousand pounds, those profits shall not be chargeable to the national defence contribution.

(2) Where the profits arising in any chargeable accounting period from a trade or business exceed two thousand pounds but are less than twelve thousand pounds, those profits shall, for the purpose of assessment to the national defence contribution, be reduced by a sum equal to one-fifth of the difference between the amount of those profits and twelve thousand pounds.

(3) In relation to a chargeable accounting period of less than twelve months, references in this section to two thousand pounds and twelve thousand pounds shall be construed as references to a sum which bears the same proportion to two thousand pounds or to twelve thousand pounds, as the case may be, as the length of the period bears to twelve months.

PROVISIONS AS TO SUBSIDIARY COMPANIES.

22.—(1) Where a body corporate resident in the United Kingdom is a subsidiary of another body corporate so resident (hereafter in this section referred to as "the principal company") the principal company may, by notice in writing given to the Commissioners of Inland Revenue before the expiration of any chargeable accounting period of the subsidiary or within two months thereafter, require that the provisions of subsection (2) of this section shall apply to the subsidiary as respects that period and all subsequent chargeable accounting periods throughout which it continues to be a subsidiary of the principal company:

Provided that, if the first chargeable accounting period of the subsidiary ended before the passing of this Act, a notice given as respects that period within two months from the passing of this Act shall have effect for the purposes of this section as if it had been given within two months from the end of that period.

(2) Where such a notice is given, the profits or losses arising in any chargeable accounting period to which the notice relates from the trade or business carried on by the subsidiary shall be treated, for the purpose of the

provisions of this Act relating to the national defence contribution other than the provisions of paragraph 2 and sub-paragraph (2) of paragraph 3 of the Fourth Schedule to this Act, as if they were profits or losses arising in the corresponding chargeable accounting period from the trade or business carried on by the principal company.

(3) For the purpose of this section—

(*a*) a body corporate shall be deemed to be a subsidiary of another body corporate if and so long as not less than nine-tenths of its ordinary share capital is beneficially owned by that other body corporate;

(*b*) the expression "ordinary share capital" has the same meaning as in the Fourth Schedule to this Act;

(*c*) a chargeable accounting period of a subsidiary shall be deemed to correspond to such chargeable accounting period of the principal company as the Commissioners of Inland Revenue may determine.

SPECIAL PROVISION AS TO BUILDING SOCIETIES.

23.—(1) The amount of the national defence contribution chargeable on the profits arising in any chargeable accounting period from the business of a building society shall not exceed one and one-half per cent. of the amount of those profits computed in accordance with the provisions of Part III of this Act, but without allowing any deduction for interest paid on money borrowed by the society from members or depositors.

(2) For the purpose of this section the expression "building society" means a society regulated by any of the Acts regulating building societies, or a society registered under the Industrial and Provident Societies Acts, 1893 to 1928, which carries on a business of such a nature that it could have been established under any of the Acts regulating building societies, and no other business.

ASSESSMENT, COLLECTION, APPEALS, ETC.

24.—(1) The national defence contribution shall be assessed and collected by the Commissioners of Inland Revenue in accordance with the provisions of Part I of the Fifth Schedule to this Act, and shall be due and payable at the expiration of one month from the date of the assessment, and shall be recoverable as a debt due to His Majesty from the person on whom it is assessed.

(2) Any person who is dissatisfied with any such assessment may appeal subject to and in accordance with the provisions of Part II of the said Schedule.

(3) The provisions of Part III of the said Schedule shall have effect for the purpose of carrying into effect the provisions of this section and of Parts I and II of the said Schedule and otherwise for supplementing those provisions.

DEDUCTION OF NATIONAL DEFENCE CONTRIBUTION IN COMPUTING LIABILITY TO INCOME TAX.

25.—(1) The amount of the national defence contribution payable in respect of the profits arising from a trade or business in any chargeable accounting period shall be allowed to be deducted as an expense in computing for the purpose of income tax the profits and gains arising from that trade or business in that period.

(2) Where an amount is allowed to be deducted as an expense by virtue of this section, any income tax overpaid in consequence thereof by any person shall be repaid to him.

THIRD SCHEDULE.

MODIFICATION OF ENACTMENTS RELATING TO SURTAX ON UNDISTRIBUTED INCOME OF CERTAIN COMPANIES (SECTION 14).

1. Where by virtue of this Act a direction is given under sub-section (1) section twenty-one of the Finance Act, 1922, that the actual income of an investment company from all sources for a year of assessment shall be deemed to be the income of the members—

(*a*) the amount to be deducted in assessing and charging surtax under the provisions of the said section in respect of the sum apportioned to any member in consequence of the direction shall be any amount which has been distributed to him by the company in that year of assessment out of the income of the company for that year in such manner that the amount distributed falls to be included in the statement of total income to be made by him for the purposes of surtax;

(*b*) paragraph 9 of the First Schedule to the Finance Act, 1922, shall not apply, but the income apportioned to a member of the company, so far as assessable and chargeable to surtax under section twenty-one of the said Act, shall, for the purposes of that tax, be deemed to have been received by him on the last day of that year of assessment;

(*c*) sub-section (1) of section thirty-two of the Finance Act, 1927, shall apply, in a case where the second company referred to therein is an investment company, as if the amount to be deemed to be the income of the members of that company and to be apportioned among them under that sub-section were the excess of the amount apportioned to that company in consequence of the direction over the amount, if any, which has been received in that year of assessment by that company out of the income of the first company for that year in such manner as would, in the case of an individual, render the amount so received liable to be included in the statement of his income for the purposes of surtax.

2. Sub-section (3) of section eighteen of the Finance Act, 1928, shall have effect as if there were inserted—

(*a*) in paragraph (*a*) thereof after the words "year or other period," where they first occur, the words "or any year of assessment ending within that year or other period," and where they secondly occur, the words "or any such year of assessment";

(*b*) in paragraph (*b*) thereof after the words "year or period" the words "or any year of assessment ending within that year or period."

3. In this Schedule any reference to a year of assessment shall include a reference to a period which is treated by the Special Commissioners by virtue of this Act as if it were a year of assessment.

FOURTH SCHEDULE.

ADAPTATIONS OF INCOME TAX PROVISIONS AS TO COMPUTATION OF PROFITS (SECTION 20).

1. The profits shall be taken to be the actual profits arising in the chargeable accounting period; and the principles of computing profits by reference to any other period and, save as provided in the next following paragraph, of allowing losses sustained in any other period to be carried forward, shall not be followed.

2.—(1) Where a person carrying on a trade or business either solely or in partnership has, before the beginning of the first of the relevant accounting periods, sustained a loss (as computed for income tax purposes) in the trade or business, he may claim that so much of that loss shall be carried forward and deducted from or set off against the profits arising from the trade or business in any of the relevant accounting periods as could, under section thirty-three of the Finance Act, 1926, as amended by section nineteen of the Finance Act, 1932, be carried

forward and deducted from or set off against the assessable income tax profits of the trade or business for the year of assessment corresponding to that accounting period :

Provided that, in ascertaining the amount (if any) that could be so carried forward and deducted from or set off against assessable income tax profits for a year of assessment corresponding to an accounting period—

(*a*) the amount of the assessable income tax profits for that year shall be taken to be equal to the amount of the profits arising in that accounting period (computed in like manner as profits arising in a chargeable accounting period are computed for the purpose of the national defence contribution but before making any deduction for wear and tear under the next following paragraph) ;

(*b*) the amount of the assessable income tax profits for any previous year of assessment corresponding to a previous relevant accounting period shall be taken to be equal to the amount of the profits (computed as aforesaid) arising in that previous accounting period ; and

(*c*) the amount of the deduction (if any) to be made from the assessable income tax profits under Rule 6 of the Rules applicable to Cases I and II of Schedule D for any year of assessment corresponding to a relevant accounting period shall be taken to be equal to the amount which, under the provisions of sub-paragraph (1) of the next following paragraph, falls to be deducted in computing the amount of the profits arising in that accounting period.

(2) Where a person carrying on a trade or business either solely or in partnership has, in any relevant accounting period, sustained a loss in the trade or business (to be computed in like manner as profits arising in a chargeable accounting period are computed for the purpose of the national defence contribution) he may claim that that loss shall be carried forward and, as far as may be, deducted from or set off against the profits arising from the trade or business in the next relevant accounting period and, if and so far as it exceeds the profits so arising in that period, against the profits so arising in the next such period, and so on.

In the application of this sub-paragraph to a loss sustained by a partner in a partnership, references to losses or profits shall be construed as references to that partner's share in those losses or profits.

(3) For the purpose of this paragraph—

(*a*) the expression " assessable income tax profits " in relation to any year of assessment means the profits or gains of the trade or business assessable to income tax under Schedule D for that year ;

(*b*) the expression " relevant accounting period " means any accounting period falling wholly or partly within the five years beginning on the sixth day of April, nineteen hundred and thirty-seven ;

(*c*) the year of assessment following that in which an accounting period ends shall be deemed to correspond to that accounting period.

3.—(1) There may be deducted in respect of any accounting period a sum (ascertained on the like basis as the amount of a deduction for wear and tear is ascertained under Rule 6 of the Rules applicable to Cases I and II of Schedule D) which represents the diminution in value by reason of wear and tear during that period of any plant or machinery in respect of which a deduction could be made under the said Rule 6, plus ten per cent. of that sum.

(2) Without prejudice to the foregoing provisions of this paragraph, there may, in the case of the first chargeable accounting period, be deducted any sum which, under paragraph (3) of the said Rule 6, falls to be added to the amount of the deduction for wear and tear to be made under that Rule in charging the profits or gains of the trade or business to income tax for the year 1937-1938 :

Provided that, if the amount of the deduction falling to be made under this sub-paragraph exceeds the amount of profits arising from the trade or business in the first chargeable accounting period, the excess shall, in lieu of being deducted in that chargeable accounting period, be deducted in the second chargeable accounting period if and in so far as there are profits arising in that period, and so on.

4. The principles of the Income Tax Acts under which deductions are not allowed for interest, annuities or other annual payments payable out of the profits, or for royalties, or (in certain cases) for rent, and under which the annual value of lands, tenements, hereditaments or heritages occupied for the purpose of a trade or business is excluded, and under which a deduction may be allowed in respect of such annual value, shall not be followed :

Provided that nothing in this paragraph shall authorise any deduction in respect of—

(*a*) any payment of dividend or distribution of profits ; or

(*b*) any interest, annuity or other annual payment paid to any person carrying on the trade or business, or any royalty or rent so paid ;

and, for the purpose of paragraph (*b*) of this proviso, where the trade or business is carried on by a company the directors whereof have a controlling interest therein, the directors shall be deemed to be carrying on the trade or business.

5. The provisions of sub-section (4) of section twenty-seven of the Finance Act, 1920 (which disallows deductions on account of the payment of dominion income tax) shall not apply.

6. Where, in respect of any profits arising from a trade or business, relief from income tax chargeable in the United Kingdom is granted by virtue of arrangements with the Government of any other country, being arrangements which for the time being have effect either—

(*a*) under section eighteen of the Finance Act, 1923 (which as amended by section thirty-one of the Finance Act, 1924, and section nine of the Finance Act, 1931, provides for the relief of shipping and air transport from double taxation) ; or

(*b*) under section seventeen of the Finance Act, 1930 (which provides for the relief of certain agencies from double taxation) ;

those profits shall not be included in the profits arising from that trade or business, if and so long as the profits of trades or businesses which, by virtue of those arrangements, are relieved from income tax chargeable in that other country, are relieved from all taxes chargeable in that other country on the profits of trades or businesses.

7. Income received from investments or other property shall be included in the profits in the cases and to the extent provided in this paragraph, and not otherwise—

(*a*) in the case of the business of a building society, or a banking business, assurance business or business consisting wholly or mainly in the dealing in or holding of investments or other property, the profits shall include all income received from investments or other property except—

(i) income received directly or indirectly by way of dividend or distribution of profits from a body corporate carrying on a trade or business

to which the section of this Act charging the national defence contribution applies; and

(ii) income to which the persons carrying on the trade or business are not beneficially entitled;

(*b*) in the case of any other trade or business, being a trade or business carried on by a body corporate, the profits shall include all income received by way of dividend or distribution of profits from any other body corporate in which the first-mentioned body corporate has a controlling interest and which is not liable to be assessed to the national defence contribution:

Provided that the profits of a body corporate which either alone or in conjunction with any statutory undertakers has a controlling interest in any other body corporate, being statutory undertakers, shall not in any case include any income received from that other body corporate.

8. Subject to the provisions of the last foregoing paragraph, the profits shall include all such income arising from the trade or business as is chargeable to income tax under Case I of Schedule D, or would be so chargeable if the profits of the trade or business were chargeable under that Case, except income which is, or would be, exempted from income tax by virtue of section thirty-nine of the Income Tax Act, 1918, or section thirty of the Finance Act, 1921.

9. No deduction shall be made on account of liability to pay or the payment of United Kingdom income tax or the national defence contribution.

10. No deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced the profits or created or increased a loss or would artificially reduce the profits or create or increase a loss.

11. In the case of a trade or business carried on in any chargeable accounting period by a company the directors whereof have a controlling interest therein, the deduction to be allowed in respect of the remuneration of the directors other than whole-time service directors shall not exceed fifteen per cent. of the profits arising from the trade or business in that period (computed before making any deduction in respect of the remuneration of the directors other than whole-time service directors), or fifteen hundred pounds, whichever is the greater, so, however, that the deduction shall in no case exceed fifteen thousand pounds:

Provided that in relation to a chargeable accounting period of less than twelve months any reference in this paragraph to fifteen hundred pounds or fifteen thousand pounds shall be construed as a reference to a sum which bears the same proportion to fifteen hundred pounds or fifteen thousand pounds, as the case may be, as the length of the period bears to twelve months.

12.—(1) In the case of a trade or business carried on in any chargeable accounting period by an individual or individuals in partnership, he or they may claim that there shall be allowed as a deduction in respect of that period the greatest amount which could have been allowed as a deduction under the last foregoing paragraph in respect of the remuneration of the directors other than whole-time service directors, if the trade or business had been carried on in that period by a company the directors whereof had a controlling interest therein:

Provided that where a deduction is made under this paragraph as respects any period, the profits arising from the trade or business in that period shall be chargeable to the national defence contribution at the rate applicable in the case of a trade or business carried on by a body corporate.

(2) Any claim under this paragraph shall be made by notice in writing given to the Commissioners of Inland Revenue within one month from the end of the chargeable accounting period in question.

13. For the purpose of this Schedule—

(*a*) the expression "company" means a company within the meaning of the Companies Act, 1929, or the Companies Act (Northern Ireland), 1932;

(*b*) the expression "director" has the same meaning as in section one hundred and forty-four of the Companies Act, 1929, except that it includes any person who—

(i) is a manager of the company or otherwise concerned in the management of the trade or business; and

(ii) is remunerated out of the funds of the trade or business; and

(iii) is the beneficial owner of not less than twenty per cent. of the ordinary share capital of the company;

(*c*) the expression "whole-time service director" means a director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity and is not the beneficial owner of more than five per cent. of the ordinary share capital of the company; and

(*d*) the expression "ordinary share capital" means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate or a rate fluctuating in accordance with the standard rate of income tax, but have no other right to share in the profits of the company.

14. Where the performance of a contract extends beyond the chargeable accounting period, there shall (unless the Commissioners of Inland Revenue owing to any special circumstances otherwise direct) be attributed to that period such proportion of the entire profit or loss which has resulted, or which it is estimated will result, from the complete performance of the contract as is properly attributable to that period, having regard to the extent to which the contract was performed in that period.

FIFTH SCHEDULE.

ASSESSMENT AND COLLECTION OF NATIONAL DEFENCE CONTRIBUTION, APPEALS AND SUPPLEMENTARY PROVISIONS.

PART I.

ASSESSMENT AND COLLECTION (SECTION 24).

1. The national defence contribution payable in respect of any chargeable accounting period shall be assessed on the person carrying on the trade or business in that period.

2. Where two or more persons were carrying on the trade or business jointly in the relevant chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name, if any.

3. Where by virtue of the foregoing provisions of this Schedule an assessment could, but for his death, be made on any person either solely or jointly with any other person, the assessment may be made on his personal representative either solely or jointly with that other person, as the case may be.

4. Where any person liable to assessment under the foregoing provisions of this schedule in respect of the profits arising from a trade or business in any chargeable accounting period is not resident in the United Kingdom,

an assessment may be made upon any agent, manager or factor resident in the United Kingdom through whom the trade or business was carried on in that period.

5. An assessment (including an additional assessment) may be made at any time within six years from the end of the chargeable accounting period in respect of which the assessment is made, and in the absence of a satisfactory return or other information on which to make an assessment the Commissioners of Inland Revenue may make an assessment according to the best of their judgment.

6. The Commissioners of Inland Revenue may make regulations with respect to the assessment and collection of the national defence contribution and may by those regulations apply and adapt any enactments relating to the assessment and collection of income tax.

PART II.

APPEALS.

1. Any person who is dissatisfied with an assessment to the national defence contribution may appeal either to the General Commissioners for the division in which he is assessed for the purposes of income tax or to the Special Commissioners.

2. On any appeal under this Part of this Schedule, the General or Special Commissioners shall have power, if they think fit, to summon witnesses and examine them on oath.

3. The provisions of section one hundred and ninety-six of the Income Tax Act, 1918 (which relate to appeals in Northern Ireland from the Special Commissioners to the recorder or the county court judge), shall apply to an appeal to the Special Commissioners in Northern Ireland under this Part of this Schedule.

4. The provisions of section one hundred and forty-nine of the Income Tax Act, 1918 (which relate to the statement of a case on a point of law) shall, with the necessary modifications, apply in the case of any appeal to the General or Special Commissioners under this Part of this Schedule and in the case of any re-hearing of any such appeal in Northern Ireland, as they apply in the case of appeals to the General or Special Commissioners under the said Act.

5. Notwithstanding that an appeal is pending against an assessment to the national defence contribution, such part of the contribution assessed as appears to the Commissioners of Inland Revenue not to be in dispute shall be collected and paid in all respects as if it were a contribution charged by an assessment in respect of which no appeal was pending, and on the determination of the appeal any balance chargeable in accordance with the determination shall be paid, or any amount over-paid shall be repaid, as the case may require.

6. The Commissioners of Inland Revenue may make regulations with respect to the hearing of appeals under this Part of this Schedule, and may by those regulations apply and adapt any enactments relating to the hearing of appeals as to income tax by the Special or General Commissioners which do not otherwise apply.

7. In this Part of this Schedule the expressions "the General Commissioners" and "the Special Commissioners" have respectively the same meanings as in the Income Tax Act, 1918.

PART III.

SUPPLEMENTARY PROVISIONS.

1. Any surveyor appointed for the purposes of the Income Tax Acts may by notice in writing require any person who carries on or has carried on any trade or business to which the section of this Act charging the national defence contribution applies to deliver to him a return (in such form as the Commissioners of Inland Revenue may prescribe) of the profits arising from the trade or business in any period during which it was carried on by that person and to furnish him with any other particulars relating to the trade or business:

Provided that—

(*a*) where any such person as aforesaid is dead, or is a body corporate which is being wound up, the notice may be given to the personal representative of the dead person or liquidator of the body corporate, as the case may be;

(*b*) where the trade or business is or was being carried on by persons in partnership, the notice may be given in the partnership name, if any;

(*c*) where the person who carries on or has carried on the trade or business is not resident in the United Kingdom, the notice may be given to any agent, manager or factor resident in the United Kingdom through whom he is or was carrying on the trade or business.

2. Every person to whom a notice is given under the last foregoing paragraph shall comply with the requirements thereof within one month from the date of the notice:

Provided that where a notice is given in the partnership name to the persons who are or were carrying on a trade or business in partnership it shall be the duty of the precedent partner or, where no partner is resident in the United Kingdom, of the agent, manager or factor of the firm resident in the United Kingdom, to comply with the requirements of the notice.

For the purpose of this paragraph the expression "the precedent partner" has the same meaning as in paragraph (2) of Rule 10 of the rules applicable to Cases I and II of Schedule D in the Income Tax Act, 1918.

3. Where a body corporate is being wound up, the liquidator of the body corporate shall not distribute any of the assets of the body corporate to the members thereof unless he has made provision for the payment in full of any national defence contribution which may be found payable by the body corporate.

4. If any person without reasonable excuse contravenes or fails to comply with any of the foregoing provisions of this Part of this Schedule, he shall be liable on summary conviction to a fine not exceeding five hundred pounds, and in a case where he fails to comply with the requirements of paragraph 2 of this Part of this Schedule, to a further fine not exceeding fifty pounds for every day on which the failure continues.

5. In a bankruptcy, in the winding-up of a company, and in the event of a receiver being appointed on behalf of the holders of any debentures of a company secured by a floating charge or of possession of any property comprised in or subject to a floating charge being taken by or on behalf of the holders of any debentures of a company secured by that charge, the same priority shall be given to the national defence contribution as is, by the enactments relating to bankruptcy and companies, required to be given to income tax.

6. All Commissioners and other persons employed for any purpose in connection with the assessment or collection of the national defence contribution shall be subject to the same obligations as to secrecy with respect to the contribution as they are subject to with respect to income tax, and any oath taken by any such person as to secrecy with respect to income tax shall be deemed to extend also to secrecy with respect to the national defence contribution.

SIXTH SCHEDULE.

ENACTMENTS REPEALED.

PART I.

ENACTMENTS RELATING TO INCOME TAX REPEALED AS FROM APRIL 6TH, 1937 (SECTION 34).

Session and Chapter.	Short Title.	Extent of Repeal.
8 & 9, Geo. 5. c. 40.	The Income Tax Act, 1918.	The proviso to paragraph (2) of Rule 5 of the Rules applicable to Cases I and II of Schedule D.
9 & 10, Geo. 5 c. 32.	The Finance Act, 1919.	Section eighteen.
16 & 17 Geo. 5 c. 22.	The Finance Act, 1926.	In the third column of the Third Schedule the words "(other than the deduction granted by subsection (2) of section eighteen of the Finance Act, 1919)."

Reviews.

Ranking, Spicer and Pegler's Executorship Law and Accounts. *13th Edition. By H. A. R. J. Wilson, F.C.A., F.S.A.A. London: H. F. L. (Publishers), Ltd., 19, Fenchurch Street, E.C.3.* (430 *pp. Price 15s. net.*)

In bringing this well-known book up to date Mr. Wilson has endeavoured to simplify the subject as far as possible. The arrangement of the matter and the general treatment are on the same lines as hitherto and therefore do not call for any special notice. Every aspect of Executorship procedure is brought under review.

Dairy Accounts. *By R. F. Daly, A.C.A. London: Sir Isaac Pitman & Sons, Ltd., Parker Street, Kingsway, W.C.* (130 *pp. Price 10s 6d. net.*)

Recent developments of the milk trade and the formation of the Milk Marketing Board have necessitated changes in methods of dairy accounting. As internal auditor of the Milk Marketing Board Mr. Daly is well qualified to deal with the subject. Sales of milk, both wholesale and retail, are discussed as well as milk used in manufacture. The book contains numerous specimen rulings and affords information on nearly every problem likely to arise in the keeping of dairy accounts. The numerous forms and rulings which are provided assist in indicating the information which the relative records should provide.

Formation and Management of a Private Company. *3rd Edition. By F. D. Head, B.A., Barrister-at-Law. London: Sir Isaac Pitman & Sons, Ltd., Parker Street, Kingsway, W.C.* (230 *pp. Price 7s. 6d. net.*)

In compiling this publication Mr. Head takes a typical case of a small trader converting his business into a private company and proceeds to explain how the company is constituted, the business transferred to it and the books of the old firm closed and the new ones opened. Further chapters are devoted to the duties of the directors, meetings of shareholders and distribution of profits, and the appendix contains specimen Memorandum and Articles of Association, Sale Agreement and Return of Allotments, etc. Altogether the book is a very useful production.

Jordan's Company Law and Practice. *18th Edition. By Stanley Borrie, Solicitor. London: Jordan & Sons, Ltd., Chancery Lane, W.C.2.* (580 *pp. Price 12s. 6d. net.*)

The form of the book remains as before but the information has been brought up to date, including the effect of the principal cases relating to Joint Stock Companies which have been decided since the 1929 Act came into operation. The matters discussed include: offers for sale of shares and debentures, payment of interest out of capital, cancellation of shares, modification of rights of different classes of shares, reduction of capital, special resolutions, etc. The appendix contains a copy of the Companies Act, 1929, and the Companies Winding-up Rules applicable in a voluntary winding-up.

Business Charts. *3rd Edition. By T. G. Rose, M.I.Mech.E. London: Sir Isaac Pitman & Sons, Ltd., Parker Street, Kingsway, W.C.* (100 *pp. Price 7s. 6d. net.*)

In this little book Mr. Rose explains the various types of charts used in business and the principles governing the correct presentation of facts by graphical methods. Numerous examples of various kinds of charts are given and the method of construction clearly explained. Anyone interested in this subject will find in this book many valuable hints and suggestions.

Annuity and Loan Redemption Tables. *3rd Edition. By T. K. Stubbins, F.C.A. London: Sir Isaac Pitman & Sons, Ltd., Parker Street, Kingsway, W.C.* (96 *pp. Price 6s. net.*)

Many tables have been published giving present values of £1 payable at the end of every year, but in this book the present values are given where the payments are made at the end of every month for 25 years, at the end of every quarter for 50 years and at the end of every half year for 50 years, supplemented by an explanation as to how the tables are constructed and giving the formulae by which they are worked out. The appendix to the book gives a table showing the decimals corresponding to every penny in the £1, also a mortgage redemption table and a table of reciprocals.

Audit Working Papers. *By Maurice E. Peloubet, C.P.A. New York: American Institute Publishing Company.* (412 *pp. Price* $4.)

Anyone interested in the audit of American undertakings will find in this book full information on the subject of internal audit and control, including a specimen control schedule with a list of the questions required to be answered by the person in charge of the audit; also full explanations with regard to special matters such as fixed assets and deferred charges, the function of the working papers, inventories, current and contingent liabilities, capital stock and funded debt.

CONGRESS OF ACCOUNTANCY IN PARIS.

The accountancy profession in France will hold a "Semaine de la Comptabilité" from September 13th to September 19th, 1937, at the International Exhibition in Paris. The week will include a National Congress from Monday, September 13th, to Wednesday, September 15th, when the sessions will deal with the role of accountancy in relation to different branches of enterprise, budgetary control, and the cost of accountancy work; and an International Congress from Thursday, September 16th, to Sunday, September 19th. The International Congress will discuss the subjects of Accountancy Control; Accountancy now in Use; and Budget Methods.

The Congresses will be under the patronage of the President of the French Republic and members of the Government. The vice-presidents are M. Barbut, Vice-President of the Société Comptable de France; M. Delaporte, President of the Union Nationale des Groupements Comptables de France et des Colonies; M. Koehl, President of the Association des Comptables de la Seine; and M. Monneret, President of the Fédération des Compagnies d'Experts Comptables brevetés par l'Etat.

The Society of Incorporated Accountants and Auditors has accepted the invitation of the committee of organisation and will be represented by a member of the Council.

Some Aspects of Municipal Electricity Supply Finance.

A Paper read at the annual meeting of the Institute of Municipal Treasurers and Accountants by

W. E. FODEN, A.S.A.A.

(formerly Financial Controller, Electricity Department, Manchester).

This paper modestly attempts a bird's-eye statistical view of the extent to which municipalities, as a whole, have engaged in electricity supply, the capital sunk by them, the extent to which debt has been redeemed, the measure of success attending their efforts, and it offers incidental notes on accounting technique, rate aid and the general basis for tariffs. Reference is also made, at some length, to the revolutionary change in generation control and finance effected by the Electricity (Supply) Act, 1926, and, briefly, to the impending change in distribution under promised legislation.

The statistical data is mainly drawn from the admirable annual publications of the Electricity Commissioners for 1925-26 and 1935-36, without which no survey would be possible.

No claim is made for originality in this paper but it is hoped that its assembly of data and notes thereon will help members to acquire an up-to-date perspective of this highly important subject which is already playing a striking part in the industrial and social life of the nation and which, as " saturation point " is nowhere in sight, will play a still greater part in the future.

Number of Undertakings.

The numbers of publicly-owned and privately-owned electricity undertakings are shown thus :—

	Years. 1925–26.	1935–36.
Municipalities, joint boards and joint electricity authorities	360	379
Central Electricity Board	—	1
Total publicly owned	360	380
Companies and persons	233	247
	593	627

At the date of the last census (1931) two-thirds of the population of 44¾ millions were supplied by publicly owned undertakings. The foregoing numbers of undertakings take no account of amalgamations between the two periods.

Capital Outlays.

Capital outlays are next given, figures for privately-owned undertakings being also shown for the purpose of comparison :—

	Years. 1925–26. £ millions.	%	1935–36. £ millions.	%
Publicly owned ..	139.206	64.1	287.618	54.1
Central Electricity Board—				
Grid schemes ..	—	—	34.644	9.5
Standardisation of frequency	—	—	16.018	
Companies ..	77.832	35.9	193.048	36.4
	217.038	100.0	531.328	100.0

Forty years ago the outlays—company and municipal—were about £6,000,000. Sir Gwilym Gibbon, at the Royal Statistical Society last year, called attention to the nightmares of some ardent individualists in the 'eighties and 'nineties of gigantic growth in municipal trading with disastrous results to private enterprise and to initiative and progress. How baseless these have proved! In the author's own city he recalls that, when he was appointed financial officer to the electricity department, a third of a million sterling had been sunk and the Council had serious misgivings on the outlay. To-day its outlay is over 13 millions sterling and the standing of the department is second to none in the country's electricity undertakings.

Debt Redemption.

As no reasonable generalisations can be drawn from official publications on depreciation provision by companies no comparison can well be made between them and public authorities, but the latter's sound debt redemption methods prescribed by the Electricity Commissioners (as tested by standard publication of repayment of debt) and the policy adopted by many authorities of applying surplus revenue, with the consent of the Commissioners, to meet capital expenditure, fully warrant a claim that their general debt position is beyond reproach. The Commissioners wisely, in the author's opinion, took a consensus of engineering opinion throughout the country before they fixed loan repayment periods which were then generally agreed as reasonable and can still be regarded as providing adequately for debt redemption. The periods are :—

	Years.
Land (freehold)	60
Buildings	30
Main transmission lines (underground)	40
Mains and services	25
Plant	20
Meters, motors, etc.	10
Domestic apparatus	7

Where renewals become necessary before the expiry of the loan period the Commissioners rightly insist that, before granting fresh sanctions, provision should be made for the immediate liquidation of outstanding debt on superseded assets or, in special cases, for the acceleration of ordinary liquidation. Many years ago purists in the accountancy world argued that double provision should be made out of revenue—for debt redemption and for a renewals fund to obviate re-borrowing. This argument, however, found an early grave because of the general recognition that future consumers using the new assets could properly be called upon to pay for them and that it is no part of the duty of one generation to bear the double burden of paying for its own assets and of providing for posterity.

The risk of loan periods being too long arises, of course, not from the probable " lives " of assets but from obsolescence. Electricity supply has long shown itself a restless dynamic industry and Mr. A. P. M. Fleming at the management conference at Oxford last September said :—

> " in these days of intensive research and equally rapid expansion of new scientific knowledge there is increasing danger of a new discovery replacing, almost overnight, processes or commodities which have involved enormous capital expenditure in plant and equipment."

This risk is clearly one of the justifications for the creation of reserve funds. The balance in hand of reserve and other revenue funds of public authorities at the end of 1933-36 amounted to £13,781,559, equalling 4.79 per cent. on their capital outlays.

NET DEBT.

The net debt of public authorities (apart from the recently established Central Electricity Board) was £76,978,000 and £149,910,000 at 1925-26 and 1935-36, respectively, showing that mainly from debt redemption and to a relatively small extent from capitalisation of profits, 55 per cent. and 52 per cent. of the cumulative capital outlays at the dates named were freed from debt. It is difficult to draw precise inferences in this connection because of varying dates at which undertakings were established and the constant yearly expansion on capital account to meet ever-growing demands. But the debt position appears so sound that, apart from wholesale disturbance from new scientific discoveries, a considerable period of " free user " after the expiry of debt-redemption periods should (under well-informed engineering opinion as to " lives " probably being much longer under some headings than debt-redemption periods) enable municipal electricity charges in the not-distant future to be greatly reduced and ultimately under pressure of public opinion and threat of legislation compel supply companies to follow suit.

REVENUE ACCOUNT.

Taking gross surpluses of public authorities (other than the Central Electricity Board) in the mass and expressing them as percentages of cumulative capital outlays at 1925-26 and 1935-36 the figures of 8.0 and 7.8 emerge, thus showing no striking differences in the decade. The corresponding percentages for companies for the periods named were 9.4 and 8.5. Appropriations by those public authorities expressed as percentages of gross surplus were as follows :—

	Years.	
	1925–26.	1935–36.
Interest charges	34.8	28.10
Debt redemption charges ..	38.8	41.14
	73.6	69.24
Net transfers to reserve and renewals funds	8.0	7.12
Special expenditure including amounts applied to capital expenditure	11.0	13.49
Net contributions in relief of rates	6.4	2.52
Income tax	(*a*)	6.22
Net increase in balances on net revenue account	1.0	1.41
	100.0	100.00

(*a*) Included as rents, rates and taxes in the Commissioners' Publication. The gross surplus for 1925-26 is, therefore, understated in consequence.

The reduced appropriation for interest is presumably due to lower money rates and to the effect of using sinking funds for actual debt redemption instead of investing such funds. The increase in the proportion of special expenditure is probably accounted for by the fact that under the Act of 1926 power was given for surplus revenue to be used, with the consent of the Commissioners, for capital purposes.

BALANCE SHEET TECHNIQUE.

While on the twin topics of debt redemption and capital outlays the author would urge that all the influence of the Institute should be given to the policy of deleting from the capital account all outlays on sold, abandoned, or discarded assets, by a corresponding amount written off the so-called sinking fund surplus. This is known to be the desire of the Electricity Commissioners and has always been the practice in Manchester ; the author was indebted many years ago to the teaching in this connection of this year's President of the Institute of Chartered Accountants who then showed the weakness of the double account system. An example of the need of consistent annual writing-off was strikingly revealed not long ago, when one of the largest municipal electricity undertakings, which had neglected it, was compelled by force of events to write off in one fell swoop about £2¼ millions and to reduce the artificial sinking fund surplus correspondingly. Obviously electricity capital accounts should be confined to existing assets and the *contra* item in the balance sheet, dealing with sinking fund surplus, should be correlated to existing assets only. The Institute has in fact agreed with the Income Tax Commissioners, after consultation with the Electricity Commissioners, that aggregate capital expenditure shall be exclusive of expenditure on discarded assets.

RATE AID.

The author notes with pleasure the fall in rate aid from £742,031 in 1925-26 to £566,208 in 1935-36, because, though long a believer in moderate rate aid, within the limits allowed by the 1926 Act and indicated in *The Accountant* newspaper many years before 1926, he has come round to the view that the best services municipal electricity supply can render are to sell as near to cost as is reasonably safe to attract rateable value by the supply and to hasten the day when electricity consumers and ratepayers are practically the same body. Moreover, when the McGowan proposals are implemented and merger of small with large municipal electricity undertakings occurs, rate aid will become very difficult, if not impracticable. Commenting on the present position, however, it may be said that the requirements of the 1926 Act regarding investment of reserves in statutory securities as a pre-condition for rate aid seem to have been ignored by some local authorities, and the policy of using reserves for capital expenditure and other purposes seems unsound financially, apart from the legal aspect. Used in this fashion, of course, the reserves cease to be reserves.

TARIFFS.

On the subject of electricity supply tariffs it may, incidentally, be said that, in the long run, sound management and equity call for the cost basis and not, as in railway phrase, " charging what the traffic will bear." The cost basis, moreover, complies more appropriately with electricity price legislation, requiring similar charges in similar circumstances. Logically there is, in general, no foundation for flat rates because 60 per cent. to 80 per cent. of all costs are in the preparation or fixed category through inability to store electricity and are unaffected by variations in consumption. Compound rates—fixed and running—are clearly necessary, as recognised by the Central Electricity Board itself in framing its own various district tariffs. Supply undertakings working without minimum charges to consumers are clearly operating on an uneconomic basis and are, in fact, subsidising some consumers at the cost of others. These remarks on tariffs apply, of course, to supply taken at any and all times of the day or night, where consumers are under no time restriction. Limited exceptions may reasonably be made where demands occur outside critical times, *e.g.*, water heating during the night only, thus avoiding hours of peak demands. Off-peak demands, however, either domestic or industrial, are relatively small, the principal business of electricity supply, unavoidably, being in the on-peak or unrestricted category. There are, of course, far too many varieties of tariffs at present and the time is overdue for their reduction to a few standard bases

which pay proper regard to the facts of fixed costs in relation to electrical demand in kilowatts, and running costs in relation to consumption in kilowatt hours. Other bases are inherently false.

VOLUME OF BUSINESS.

For the purposes of general interest, a comparison is made herewith of quantities sold, exclusive of supplies in bulk, in millions of kilowatt-hours :—

	Years.			
	1925-26.	Percentage of total.	1935-36.	Percentage of total.
Publicly-owned authorities (exclusive of Central Electricity Board) ...	3609.7	64.4	9646.7	64.1
Companies	1996.4	35.6	5402.7	35.9
	5606.1	100.0	15049.4	100.0

The respective increases in the two groups of 167 per cent. and 170 per cent. show almost equal growth. In parentheses it may be worthy of note that the annual report of the Central Electricity Board to December, 1936, showed that since 1929 the output of electricity in Great Britain has increased by over 95 per cent., whereas over the same period the expansion of world production has not exceeded 35 per cent. Great Britain is thus in a fair way to remove her comparative backwardness in electricity supply in the near future.

The numbers of consumers served by the two groups are not available before 1927-28, hence the following eight-year comparison, in millions :—

	Years.			
	1927-28.	Percentage of total.	1935-36.	Percentage of total.
Publicly-owned authorities ...	1.89	72.8	5.35	69.4
Companies	0.70	27.2	2.35	30.6
	2.59	100.0	7.70	100.0

CONTROL OF GENERATION.

Under the Electricity (Supply) Act, 1926, the main objective is the selection, control and interconnection, by means of a system of main transmission lines, of those stations—relatively few in number—best fitted to supply the bulk of the energy required by the nation, with the maximum of economy, *i.e.*, mass production of cheap electricity. Savings from reduction in standby or reserve plant and in fuel and other economies in the stations should therefore more than compensate for the cost of operating the Central Electricity Board's transmission system known as "the Grid." The Grid, in fact, operates as a "distributing or clearing system, an insurance system and a broking or merchanting system." As a clearing system for electricity the Grid also insures against breakdown of generating plant or unexpected increases of load and so enables stations to work with less plant. According to the last report of the Central Electricity Board the saving in capital outlays through reduction in reserve plant over the country is about £14 millions and this factor rightly produces considerable income to the Board from owners under reckonings under sect. 13, as is pointed out later in this paper.

The Act, as is well known, sets up a dual financial relationship for owners of selected stations. They sell all output at cost to the Board and re-purchase their requirements from the Board. The differences between quantities sold and quantities purchased are commonly known as "exports" which the Board, in turn, sell, *via* the Grid, to other electricity undertakings who purchase under Grid Area tariffs, which, under a ten-years budgetary period, are designed to cover ultimately all costs, including interest and sinking fund charges, with such margins as the Electricity Commissioners allow.

When the Act was framed the general expectation was that, of the two main purchasing bases available for the owners of selected stations for their own requirements, that known as "adjusted station costs" (being actual costs under intensive Grid working, *plus* oncost) would show lower costs than if the Grid had not been provided and so give owners some return for user of their plants by the Board. In practice, however, most of the 132 owners (88 public, 44 private) find adjusted station costs prohibitive and resort to sect. 13 of the Act, which was inserted as a safeguard, to put them in no worse financial position than if the Act had not been passed. Under the imaginative or notional independent operation costs of sect. 13, the result is that the Board merely pays ultimately and only for differential cost of additional fuel, oil, water and certain repairs in respect of "exports." The financial procedure is in accordance with the provisions of the Act but provides nothing whatever for owners toward capital and certain other recurring costs and no remedy appears practicable until there is fresh legislation. The effect is that the plant of owners of selected stations is being used on a large scale at their cost to afford supplies *via* the Grid to other undertakings at costs which the latter could not secure for themselves.

The differential cost and differential yield from "exports" are illustrated below; the illustration is confined for the sake of clarity to existing plant and it ignores—

(*a*) regional plant provided by owners for the Board alone, and

(*b*) hypothetical plant which owners would have provided in the absence of the Grid and on which they have rightly to pay the Board's charges as being in the nature of a standby service :—

A	B	C
Selling under sect. 7 of Act of 1926 for retained and exported energy.	*Purchasing of retained energy under sect. 13.*	*Difference between A and B, being differential cost yield for owners from "exports."*
Works costs ..	As in A, but reduced for fuel, oil, water and certain repairs attributable to "exports."	The additional fuel, oil, water and additional repairs (such as to boiler and other mechanical plant—not electrical plant).
Management, rating, etc.	As in A.	Nil.
Capital recurring costs.	As in A.	Nil.

Sir Henry Bunbury, late of the Post Office, said in his useful book on overhead costs that differential cost implied the existence of other and, so to speak, antecedent costs, which are excluded by the differential method, and that under the analysis of total costs, two portions emerge, *i.e.*, costs which would not be incurred if production were so much less and costs which would be incurred anyhow.

The resultant grievance of owners in one area—the North-West—owing to free user of their plant by the Board, is to some extent met by a pooling scheme there adopted, providing, on terms, for the division of the

Board's profits between the Board and the owners over a ten years' budgetary period. So far, no scheme has appeared for other areas.

In this matter of generation finance, it may be permissible to point out that the elaborate accounting system framed by agreement between a committee, upon which the Institute was represented, and the Central Electricity Board and designed for selected stations, working with adjusted station purchasing costs in view, has become rather farcical in view of the general adoption of the purchasing arrangements under sect. 13, with its self-cancelling features emphasised earlier in this paper. A simpler basis is desirable and practicable. The imaginative or notional reckonings under sect. 13 bid fair to become unworkable in the near future and take an enormous amount of time annually for the majority of the owners and for the Board.

A general idea of the difficulties of framing hypothetical independent working costs against owners under sect. 13 may be gleaned from the following points :—

(1) *Where there is no hypothesis of further plant and consequently no standby service rendered by the Grid* then (*a*) fuel and water costs have to be reckoned more onerously for owners' less intensive working than for the actual costs per unit under more intensive Board working, and (*b*) boiler and boiler house costs, being broadly proportional to output (in contra-distinction from electrical plant where cost is much the same for, say, 40 per cent. or 80 per cent. load factor) have to be divided arbitrarily.

(2) *Where additional plant would have been but is not, in fact, provided (the Grid thus acting as standby)*, then (*a*) fuel and water costs are necessarily taken at lower levels per unit of output than under actual Grid working, so as to secure the hypothetical harvest of economy from the hypothetical plant, and (*b*) capital recurring costs have properly to be borne along with rating, management, insurance and repairs for the non-existent plant ; as all these costs are estimates, controversy is the outcome.

(3) *In cases where regional plants are installed under the direction of the Board for the use of the Board and not for owners' purposes*, the costs fall solely on the Board (while in the regional category) and, as a consequence, the economies effected in the station working due to such plants cannot be claimed by owners, who have, therefore, to pay for fuel, water, etc., costs as if such plants did not exist, *i.e.*, at a higher level per unit than actual station working.

If sect. 13 continues to operate some owners in the near future may have to frame notional costs on non-existent complete stations which would have been provided but for the Grid scheme (with its attendant controversy), estimated on capital costs for imaginary land, buildings, plant, etc., together with estimates of operating, management, rating, etc., costs. What an appalling prospect ! Even for existing stations the calculations are often highly controversial and take many months to settle, each selected station having to be dealt with individually. Actual works costs under Grid working are a very secondary guide in framing these notional or hypothetical costs under sect. 13.

Expert opinion is practically unanimous that the Act of 1926 took a big step forward in the national interest and that the Grid scheme is well-conceived and administered. But the Act is rather marred by the financial injustice inflicted in practice (whatever may have been the intentions of the Act), on most selected station owners, who are the most efficient and progressive in the country. Why should their plants be used free for the benefit of owners of non-selected stations ? If the precedent so set be followed in other public utilities, what a vista opens ! Electricity supply development outside the boundaries of the selected station owners is being to no small extent secured at their cost. No figures are readily available to show the huge volume of annual "exports" to the Board from all the selected station owners, but the following have appeared in recent Press reports, in each case for the last completed year :—

	Millions of Kilowatt Hours.
Birmingham Corporation	81
Manchester Corporation	162
London Power Co., Ltd.	909
County of London Electric Supply Co., Ltd. ..	831
Midland Counties Company	98
Yorkshire Power Company	90

This injustice, for which the Act and not the Board is responsible, cannot, apparently, be remedied without fresh legislation, which would seem to necessitate increases in Grid tariffs against electricity supply undertakings which purchase under such tariffs. These in turn would be dissatisfied and would no doubt combine in protest.

FUTURE DISTRIBUTION CONTROL.

The author considers no definite views can be advanced until the promised Parliamentary Bill is published but may, perhaps, be permitted now to make two general points, viz. :—

(*a*) that as economic electricity boundaries and municipal boundaries have by no means ever "marched together," small municipalities should logically be prepared, on reasonable terms, to surrender control to larger municipal or company undertakings, so securing present or prospective lower electricity charges for their consumers ; and

(*b*) that these terms should be the same for small companies and small municipalities.

On the first point it seems clear that, if small municipalities seek everywhere to cling to electricity supply on present lines, they are rather like Mrs. Partington trying to brush back the Atlantic. On the second point, the *Economist* of December 19th last very properly said that :—

> "The McGowan Committee recommended cost *less* depreciation for local authorities, with no allowance for past or prospect of future contributions to rates : but companies were to be allowed compensation for loss of future profits in addition to the valuation of their fixed assets. There seems no rational basis for such discrimination : nor will compensation on market value bear justification since it rewards most the organisation which has most exploited its monopoly position. A fairer basis in both cases might be the principle of compensation for 'prudent investment,' which has been developed in the United States of America.
>
> "But all these are problems which can be settled within a margin of reasonableness once it is decided that the existing state of affairs can no longer be tolerated. Within a few years after the change is made the objections will have been reduced to their proper proportions. We believe that the distribution of electricity should be efficiently organised, not within fifty years but within five at the most."

In conclusion, and purely as a personal free-lance opinion, the author thinks municipal ownership of electricity supply is not a permanent solution and that either public regional boards with large areas or one centralised supply system on national lines, like the Post Office, will be the inevitable evolution.

Society of Incorporated Accountants and Auditors.

EXAMINATION RESULTS IN SOUTH AFRICA.

MAY, 1937.

Final.

Alphabetical Order.

ANDERSON, HEW STANLEY EVERARD, Clerk to L. A. Whiteley (Whiteley Brothers), New Clewer House, Simmonds Street, Johannesburg.

BRINKWORTH, CEDRIC JOHN LEWIS, Clerk to Gurney, Notcutt & Fisher, Reserve Bank Chambers, Wale Street, Cape Town.

DACE, CECIL WHEATLAND, Clerk to R. B. Hogg (Whiteley Brothers), New Clewer House, Simmonds Street, Johannesburg.

GRANT, PETER OWEN, Clerk to G. Hadfield (Douglas Low & Co.), 32, Fletcher's Chambers, Longmarket Street, Cape Town.

HOPEWELL, ARTHUR, 6, 7 and 8, Alcock House, 364, West Street, Durban, Practising Accountant.

JOUBERT, RENE MORTIMER, Clerk to J. S. Delbridge, 148, St. George's Street, Cape Town.

KINGSTON, ERIC RISDON, Clerk to E. R. Syfret & Co., 24, Wale Street, Cape Town.

LAUGHTON, ROGER, Clerk to George Mackeurtan, Son & Crosoer, Old Well Court, 376, Smith Street, Durban.

LEVIEN, JOSEPH HYMAN, B.Com., Clerk to Dryden-Pritchard & Co., N.E.M. House, First Street, Salisbury, S. Rhodesia.

MURPHY, GERALD PATRICK JOSEPH, Clerk to McKechnie & Taylor, New Clewer House, Simmonds Street, Johannesburg.

QUINE, WILLIAM CAMPBELL, Clerk to Price, Waterhouse, Peat & Co., 10-14, Standard Bank Chambers, Commissioner St., Johannesburg.

ROBERTS, BRIAN HENRY, Clerk to Charles Hewitt & Co., 53-62, Aegis Buildings, Loveday Street, Johannesburg.

RYAN, RALPH CHARLES BENJAMIN FINCHAM, Clerk to R. B. Hogg (Whiteley Brothers), New Clewer House, Simmonds Street, Johannesburg.

STERN, FREDERICK DAVID, formerly Clerk to H. E. Davis (Davis, Kellie & Co.), 83, Fore Street, Moorgate, London, E.C.2.

STRAKER, FREDERICK EATON, Clerk to Price, Waterhouse, Peat & Co., 10-14, Standard Bank Chambers, Commissioner Street, Johannesburg.

(31 candidates failed to satisfy the Examiners.)

Intermediate.

Alphabetical Order.

BERELOWITZ, ALEC, Clerk to Alex Thal (Alex Thal & Co.), African Life Buildings, 85, St. George's Street, Cape Town.

JACKSON, JOSEPH DUDLEY, Clerk to H. A. Olsen (H. A. Olsen, Wackrill & Anderson), 501-6, Transvaal House, 80, Commissioner Street, Johannesburg.

MELNICK, SOLOMON, Clerk to A. Rosenberg, Bothner's Buildings, 84, St. George's Street, Cape Town.

SMITH, GEORGE ELCOATE, Clerk to Pulbrook & Wright, Manica Chambers, Manica Road, Salisbury, S. Rhodesia.

(Four candidates failed to satisfy the Examiners.)

Practical Aspects of the Duties of Trustees, Liquidators and Receivers.

A LECTURE delivered to the Incorporated Accountants' District Society of Cumberland and Westmorland (Students' Section), by

MR. ALBERT V. HUSSEY,
INCORPORATED ACCOUNTANT.

Mr. EDMUND LUND, M.B.E., F.S.A.A., City Treasurer, occupied the chair.

Mr. HUSSEY said: In opening my remarks, I desire to draw your attention to the volume of insolvency which may not be generally appreciated. The Board of Trade presents to both Houses of Parliament each year a report upon company matters; also a report upon bankruptcies and deeds of arrangement. The report of 1934 dealing with bankruptcies contains a review of the past 50 years, and it is most interesting to note that, apart from the war years, the average number of bankruptcy cases is in excess of 4,000 per annum, with average liabilities of seven million pounds. Combining deeds of arrangement with bankruptcies, the average is increased to 6,000 cases per annum, with estimated liabilities approaching thirteen million pounds, the assets being only four million pounds; thus, the annual loss to the trading community arising from the failure of sole traders and partnerships appears to be an average of nine million pounds.

We have all heard of limited liability companies, and we all know that they, too, fail at times, and although during the year 1935, 3,066 liquidations were commenced (excluding Scotland), the report issued by the Board of Trade gives no information as to the liabilities and assets involved, but I suggest that it is most likely that at the very least a similar loss is suffered annually by the trading community as a result of company failures. Perhaps you share my view that it is a great pity we cannot have the benefit of the same information relating to companies which is available regarding sole traders and partnerships. If my assumptions are correct, then it seems that something like 10,000 insolvency cases, involving a total deficiency approaching twenty million pounds, are dealt with annually, and it seems to me that although these figures may be infinitesimal in comparison with the country's annual turnover, they are of sufficient magnitude to justify some attention being paid to the subject of insolvency.

Let me make it clear that the rules and regulations relating to our subject are indeed complex, and nothing I say to-night can assist you to memorise all the details which you will be expected to know at the time you sit for your examinations, but if it is any consolation to you I can assure you that the examiners do not expect you to be equal to qualified men with the knowledge acquired by years of experience.

DEEDS OF ARRANGEMENT.

For the next few minutes I want you to assume that you are already in practice on your own account, and that one of your clients, a Mr. B, whom you have been expecting to instruct you to prepare his annual accounts to December 31st, as in previous years, informs you that he is very distressed because things have not gone at all well with him during the past year, resulting in his getting behind with his payments to creditors for goods supplied; in fact, one creditor has commenced legal proceedings for the recovery of the amount due to him.

Mr. B requires your advice. What would you do?

May I suggest you should at once ascertain the total amount of your client's liabilities under the following headings :—Trade Creditors ; Expense Creditors ; Cash Creditors ; Preferential Creditors ; Contingent Liabilities. You should also ascertain the amount of his assets, as follows :—Business Assets : Cash in Hand ; Cash at Bank ; Sundry Debtors ; Stock-in-Trade ; Plant and Machinery ; Fixtures and Fittings ; Freehold and Leasehold Properties ; Goodwill, &c. Private Assets : Private Banking Account ; Investments ; Life Assurance Policies ; Motor Car ; Private Residence ; Private Furniture ; Reversionary Interests, &c.

I am sure you will fully appreciate that when once a business man has been served with a writ, the position created is one of supreme urgency, and, formidable as the foregoing suggestion may sound, it is essential to gain quickly an approximate view of your client's present position, even if his estimates prove to be at fault upon a fuller enquiry being made.

Assuming you have succeeded in obtaining these estimates, within an hour or so of first learning of the institution of legal proceedings it should be possible to gain an idea whether a carefully prepared statement of affairs will reveal a deficiency or surplus, and thus armed one can talk with some degree of knowledge as to the present position.

Assuming your client has given you his authority to act on his behalf as you think best, I suggest the next step is to communicate with the largest creditor (do not forget that the long-distance telephone service can be most useful if that creditor is at a distance). The information you have regarding your client's position can be discussed privately, emphasising the fact that all figures are estimates. Should the principal creditor agree that you continue your efforts on your client's behalf, at once communicate with the creditor who has issued the writ, seeking his forbearance whilst a statement of affairs is being prepared and arrangements made for all creditors to be acquainted with the position. It would never do for you to have to admit to a body of creditors that since you were instructed the suing creditor continued his proceedings and obtained the benefit of an execution, all while you were preparing a statement of affairs and arranging to hold the meeting.

I am now going to assume that, as frequently happens, the creditor who has commenced proceedings has agreed to take no further steps for the time being, reserving his right to take whatever action may be open to him if he is not satisfied with the position disclosed in a properly prepared statement of affairs.

You must now prepare a full list of creditors and at once circularise the creditors, informing them that you are preparing a statement of affairs and that a meeting of creditors will be held as soon as possible, concluding with an invitation to forward to you detailed statements of their claims by return of post. You will now set about the task of preparing a statement of affairs with deficiency account in support. You must also be ready to give a summary of your client's trading activities for the past few years, and a short history of his business career.

You will not forget that in preparing the statement of affairs and deficiency account, speed must be the predominating feature ; you cannot keep creditors waiting whilst a leisurely endeavour is made to balance the books to the last penny ; if necessary, the difference should be inserted in the deficiency account under the heading " Difference on Books." The meeting should be held where it will be most convenient to the majority of creditors. Questions are invariably asked by creditors at the meeting to which they have been invited and, unless the information has been given in your report, you should be fully prepared to answer questions.

Here are some of the questions to be heard at almost any meeting of creditors concerning the affairs of a sole trader :—

(1) When did the debtor commence the business, and with what capital ?

(2) When did the debtor first realise that he was insolvent ?

(3) Why did the debtor continue to trade after that date ?

(4) What have been the debtor's annual drawings ?

(5) Has the debtor previously compounded with creditors ?

(6) Has the debtor transferred any of his property to other persons ? If so, when ?

(7) Have any payments been made by the debtor which, in bankruptcy, would constitute fraudulent preferences ?

(8) Has the debtor signed a copy of the statement of affairs as being a true and complete disclosure of all his assets and liabilities ?

(9) Has the debtor any offer to make ?

We will assume that you client's liabilities are £3,000 and his assets £1,800 ; that he instructed you to offer on his behalf a composition of 8s. in the £ payable by four equal quarterly instalments of 2s. in the £ each, unsecured. We will also assume that after discussing the matter fully, the creditors declined the offer, but resolved to accept a composition of 10s. in the £, payable by four equal quarterly instalments of 2s. 6d. in the £ each, the last two instalments to be secured to the satisfaction of the three principal creditors, all costs and charges to be paid by the debtor, including the costs incurred by any suing creditor.

You will instruct a solicitor to prepare a " deed of composition " in which the following will be parties :—(*a*) the Debtor ; (*b*) the Trustee ; (*c*) the Creditors ; (*d*) the Guarantors.

You will ensure that the deed includes the following clauses :—

(1) Provision for the debtor's release from all the creditors' original claims, if the composition of ten shillings in the pound is fully paid ;

(2) Provision for the revival of the creditors' claims if there is a breakdown in the arrangement, they being compelled to give credit on their original claims only for the instalments they have received ;

(3) Provision to avoid the guarantors receiving any security or money from the debtor's estate during the currency of the arrangement ;

(4) Provision to permit extensions of time being granted to the debtor and/or the guarantors ;

(5) Provision for an investigation of the debtor's affairs to be undertaken at any time should this be considered necessary by the Trustee ;

(6) Provision limiting the debtor's drawings during the currency of the arrangement ;

(7) Provision for all costs and charges to be paid before the debtor is freed of his obligations ;

(8) Provision to declare the deed void if, amongst other things, it is discovered that the assets and liabilities were not fully disclosed at the commencement.

We have now reached the stage where the rules and regulations governing insolvency matters of this kind must be very carefully observed. When once the deed has been dated, it must be registered within seven days with the Registrar of Deeds of Arrangement, Board of Trade, London. Having registered the deed, you have twenty-one days in which to obtain the requisite majority of assents thereto, and a further period of seven days

in which to file a statutory declaration that you obtained the requisite majority in twenty-one days.

Doubtless the creditors are spread about the country; therefore you will obtain their assents by circularising them, inviting them to complete a form of assent to the deed, which you will enclose rather than resort to the clumsy method of sending the deed of composition to each creditor by post, which, apart from other reasons, might seriously prejudice the trustee's chances of obtaining a sufficient number of signatures within the very important time-limit of twenty-one days. Without the requisite majority the deed becomes void, and a notice to this effect would have to be sent to all creditors, and a copy filed with the Registrar of Deeds of Arrangement.

The debtor's execution of the deed of composition is an "act of bankruptcy," and for three months any creditor, or creditors, with claims aggregating £50 in amount, who have not signed the deed or a form of assent to the deed, could petition for bankruptcy, citing the Deed of Composition as the act of bankruptcy relied on. This three months can be reduced by notifying in the prescribed manner any creditors who have not assented to the deed, indicating that after a period of 28 days from the date of the notice they will be precluded from citing the deed of composition as an act of bankruptcy.

Let us now assume that all creditors agreed to the composition and assented to the deed. With the money accumulated in a separate banking account in the name of the Trustee, as required by the Deed of Composition, you will, at the end of three months, invite the creditors to accept the first instalment of 2s. 6d. in the £, and, three months later, you will repeat the process, but this time you must include a summary of your receipts and payments covering the period of six months from the date of the deed of composition. At nine months date you will invite the creditors to accept the third instalment, and at twelve months date the fourth and final instalment, accompanied by a further summary of your receipts and payments, as prescribed under the Deeds of Arrangement Act, 1915. Upon filing with the Board of Trade a detailed account of receipts and payments covering the period of the arrangement, duly verified by affidavit, the matter is closed, and the debtor is released of all liability in respect of the claims of all creditors who assented to the deed.

Now let us go back to the meeting of creditors and let us assume that instead of the debtor offering to pay a composition, he realised that he was unable to continue the business, perhaps on account of indifferent health or that local trading conditions were against the business ever being resuscitated, and that the creditors decided that there should be a realisation of the assets under a deed of assignment with yourself as Trustee, and a committee of inspection consisting of three creditors.

The deed of assignment provides that in consideration of assigning his assets to a named trustee, the debtor is released of all claims by creditors who assent thereto. Assets which carry with them liabilities, *e.g.*, leases, shares not fully paid up, &c., are purposely excluded. The debtor must make an affidavit recording that he executed a deed of assignment, and he must include an estimate of his assets and liabilities, the information for which would be available by reference to the statement of affairs prepared for use at the private meeting of creditors.

In passing, I desire to draw your attention to the fact that the same process is followed to obtain creditors' assents to a deed of assignment, and the same time-limits prevail as apply to a deed of composition, which is likewise subject to the Deeds of Arrangement Act, 1915.

The realisation of assets should cause you no difficulty because there is always a willing buyer, at a price, but you would be wise to consult your committee of inspection, as they may be able to render you valuable assistance in suggesting how the best offers can be obtained, although you could legally realise all the assets without consulting anyone. You should always remember that the creditors are, in fact, beneficiaries, and therefore they have a greater interest in the realisation of the assets than the Trustee who is executing a duty for a remuneration. The Trustee and the committee are prohibited from purchasing any of the assets.

As in the case of a deed of composition, the Trustee must forward a summary of his receipts and payments to the creditors each six months, and a detailed account has to be rendered to the Board of Trade at the end of the first twelve months, and thereafter annually.

Before I leave this matter let me say that creditors much prefer frequent dividends rather than the knowledge that a substantial sum is in a special banking account awaiting distribution amongst the creditors when the Trustee has realised the last remaining asset.

If the business which we had in mind to-night had been a partnership, you appreciate that the private assets and liabilities of each partner would constitute separate estates, and would have to be dealt with separately, as a creditor of the partnership can participate in the partnership assets only, unless the realisation of the assets of any separate estate produces more than sufficient to pay 20s. in the £ to the creditors of that separate estate, when the balance becomes available for the benefit of the joint estate; likewise, the separate estate creditors can only benefit from the joint estate if that estate has an excess over 20s. in the £.

It may now be considered that I have dealt with deeds of arrangement, and perhaps I am at fault in devoting so much time to the simplest propositions which have to be faced by the insolvency practitioner, but I have in mind that this address is mainly for the benefit of students, and, if you have been able to grasp how many insolvency cases first arise, and what must be done in the early stages, then I think your time has not been wasted, because, fundamentally, most insolvencies have at least two common features, namely:—(*a*) the realisation of the assets; and (*b*) the establishment of the list of creditors showing those entitled to participate in the distribution of the proceeds.

BANKRUPTCY.

Although there are eight acts of bankruptcy, it will suffice if we consider that the meeting of creditors established beyond all doubt that your client, the debtor, was suspending payment and on his behalf an admission to that effect was made. It is necessary for us to assume that in the absence of an offer of composition satisfactory to the creditors, they resolved that the matter should be dealt with, not by a deed of arrangement, but in bankruptcy. Failing your client agreeing to file his own petition, a creditor must take the step, and if upon the hearing of the petition the Registrar grants a receiving order, the debtor must file a statement of his affairs within seven days and the Official Receiver must summon the first meeting of creditors to be held within fourteen days of the receiving order.

The debtor may submit a scheme of composition, and in this event particulars are forwarded by the Official Receiver to the creditors, so that they may vote upon same at the first meeting. In the event of a scheme of composition being accepted, the receiving order is rescinded. In the absence of a scheme of composition, the first meeting of creditors convened by the Official Receiver

affords the creditors an opportunity to elect whether they require the case to be dealt with by the Official Receiver or an independent person, and, if so, whether he is to have the services of a committee of inspection, and whether such committee shall have power to fix his remuneration, &c. If you were elected Trustee at that meeting, the first thing you would be required to do would be to furnish a fidelity bond, and not until this was done would your appointment be certified by the Board of Trade.

The realisation of assets is a matter which calls for no comment. As Trustee you are at liberty to realise them for cash without any interference, but, if it is a wise precaution under a deed of assignment to consult the committee of inspection regarding any proposed sale of the assets, then it is doubly wise to follow this procedure in bankruptcy, because if creditors complained to the Board of Trade that you had not taken ordinary precautions to obtain satisfactory prices, the consequences might be extremely unpleasant.

Now as to the other side of the statement of affairs: the liabilities are represented by proofs of debt lodged by creditors; you must either admit or reject each one within 28 days of receiving it, unless you require further evidence to be produced to you by any creditor, when upon serving him with such notice you are automatically granted further time to either admit or reject his proof.

Care must be exercised to ensure that no creditor has received a preference in the three months preceding the commencement of the bankruptcy. It is your duty to obtain a return of any such preferences.

Leases, shares in companies not fully paid up, contracts containing onerous covenants, &c., if valuable, you will immediately proceed to realise; if not, you will disclaim them in the prescribed manner forthwith.

I would ask you to take particular note of the foregoing, because the power to disclaim leases, &c., can become an obsession. I have met in practice more than one case where such assets have been indiscriminately disclaimed, although mere common sense should have been sufficient to satisfy one that such documents possessed a value which could be realised for the benefit of creditors.

The public examination of the bankrupt may be perhaps defined as the occasion when the Official Receiver, the Trustee, and any creditor, may ask questions of the bankrupt appertaining to any aspect of his affairs, if they are associated with his bankruptcy, and the causes thereof. In practice it is rare that the creditors attend the public examination, at any rate in numbers. The view held by the majority of creditors seems to be that the Trustee has a greater knowledge of the details of the case, and they are content to leave it to him to examine the debtor. As between the Official Receiver and the Trustee, the general division of work is that the Official Receiver examines the bankrupt as to his conduct, whilst the Trustee seeks information as to the accuracy of the assets and liabilities disclosed in the statement of affairs, for which purpose the Trustee must conduct a thorough investigation of the books and records. For instance, the investigation may reveal that gifts have been made by the debtor at a time when he was insolvent; these should be reclaimed by the Trustee. Again, the investigation may show that although no claim exists against the estate by certain persons, the reason is because they were paid within three months before the bankruptcy and the Trustee's right to participate in the bankrupt's public examination affords him a golden opportunity to ascertain the reasons why these creditors were paid, and thus he may be able to establish beyond all doubt that they constituted fraudulent preferences which must be set aside for the benefit of all creditors.

The Committee of Inspection has to be called together every month, and if the Trustee is continuing to trade they must audit his trading account each month and the estate cash book each three months.

The first dividend has to be paid within four months, but in practice it is not often found possible to give effect to this provision, but the Board of Trade will quite rightly take steps if there is negligence on the part of the Trustee in declaring dividends. Notice of intention to declare a dividend has to be inserted in the *London Gazette*, and a notice sent to all creditors who appear on the statement of affairs, but who have not proved their debts. The dividend, when declared, must also be advertised in the *London Gazette*. Creditors have to receive a summary of receipts and payments each time a dividend is declared and an audit of the Trustee's accounts is carried out by the Board of Trade each six months.

Before a Trustee can be released from his trusteeship, he must satisfy the Board of Trade that not only has he succeeded in realising all the assets and distributed the proceeds, but has completed the task of freeing the estate of all liabilities, actual and contingent; hence the importance of the disclaimer which gets rid of future liability in consideration of a compromised claim which ranks for dividend.

When the Trustee has handed over to the Official Receiver all the books and papers in his possession the Board of Trade will gazette the notice of his release.

The bankrupt may or may not apply for his discharge prior to the Trustee obtaining his release. If the bankrupt does apply before the Trustee is released, then the Trustee is notified and afforded an opportunity of expressing his views to the Court. The Official Receiver deals with the matter if the Trustee has been released.

VOLUNTARY LIQUIDATIONS.

I think we had better keep to our original theme and assume that the client referred to earlier on this evening was not Mr. B, but B & Co., Limited. It will suffice if we imagine that Mr. B and his wife are the only shareholders, and that when you spoke to the largest creditor informing him of your instructions to prepare a statement of affairs he raised no objection to an informal meeting of creditors being held if an offer was to be made, otherwise he agreed with you, that being a limited company there would be no alternative but for the company to take steps to go into liquidation.

Time will not permit a reference to the various methods that have been resorted to by companies for the purpose of effecting a compromise with their creditors, but let us take a very simple method which you will not find in the text books.

Mr. B has a friend who is willing to render financial assistance, and the creditors are asked to undertake to assign their debts to the friend, if called upon to do so, in consideration of that friend guaranteeing to pay to them a sum equal to, say, ten shillings in the pound, payable by four equal quarterly instalments. You appreciate that the company continues to function quite normally, and, when the arrangement has been concluded, its balance sheet will include the claim of the friend, equal to, and in place of, the whole of the creditors' original claims. No limited liability company can obtain a legal discharge for a debt if it pays less than 20s. in the £, except under a scheme approved by the Court, or through the process of liquidation, and the illustration I have given you is but one of a number of methods I have known to be employed in practice, but please do

not assume that I favour evasion of the law. I do not.

We must continue on the basis of our earlier discussion and now assume that the creditors of your client, Messrs. B & Co., Limited, were not attracted by the offer of 10s. in the £ made to them, and required the company to take steps to place itself in voluntary liquidation without further delay. Meetings of the shareholders and creditors are necessary and the former must hold their meeting on the same day or the day before that of the creditors. Proxy forms must be sent to the creditors, who may vote in person or by proxy. You may be nominated by the shareholders to be the liquidator, and if the creditors confirm your nomination you automatically become the appointed liquidator, but if they nominate some other person his nomination takes precedence, and he automatically becomes the appointed liquidator. It is very necessary to observe all the provisions laid down in the Companies Act, 1929, dealing with creditors' voluntary liquidations, but they should cause you no difficulty.

You appreciate that by this method of liquidation the creditors are not compelled to prove their debts unless you so require them. The realisation of assets can be proceeded with in similar manner as would apply under a deed of assignment or in bankruptcy, you being at liberty to realise them for cash without reference to any person, but I would again urge you to remember that, since the creditors are directly interested in the proceeds, you would be well advised to consult them through their committee before accepting offers.

The creditors are not by law entitled to receive a summary of the liquidator's receipts and payments, and if the realisation and distribution of the assets has been completed within twelve months, then upon holding the necessary meetings of shareholders and creditors and filing a summary of your receipts and payments at Bush House, London, the matter is closed, except that the company remains on the file at Bush House for a period of three months before being dissolved. If the liquidation extends beyond a year, then a detailed account of receipts and payments has to be filed at Bush House at the end of the first year and subsequently each six months. Meetings of shareholders and creditors must be held each year.

Should a surplus arise after paying all creditors in full, it must be distributed to the shareholders, as provided for in the company's Articles of Association, failing which, Table "A" of the Companies Act, 1929, applies.

COMPULSORY LIQUIDATION.

For all practical purposes, compulsory liquidation compares with bankruptcy, but the following should be carefully noted:—

(1) No time limit is imposed in which dividends are to be declared.
(2) The assets never vest in a liquidator, he realising them for and on behalf of the company.
(3) There is no doctrine of "relation back" in liquidation.
(4) A floating charge over assets cannot be given by a sole trader or partnership, but if given by a company for a past consideration within six months preceding liquidation it is void against the liquidator.
(5) A public examination of the directors can only take place if directed by the Court. In bankruptcy, every bankrupt must submit to a public examination.
(6) The Court issues a summary of the liquidator's receipts and payments each six months, but in bankruptcy the Trustee issues the summary, and then only when dividends are declared.

RECEIVERSHIPS.

The more common task of the accountant when acting as receiver is when appointed under hand by a debenture holder, and suffice it to say that upon appointment the receiver's first task is to satisfy himself that his appointment is valid.

No right to appoint a receiver can arise under an ordinary or naked debenture, even if the instrument purports to give such right.

Assuming the debenture to contain a fixed or floating charge over the assets of the company, care must be exercised to satisfy oneself that the power to appoint a receiver has arisen, and whether one is confined to acting as receiver as distinct from receiver and manager.

If the debenture was given in respect of a past consideration then the receiver must realise that if the company passes into liquidation within six months of the creation of the charge, it will be invalid unless it can be proved that the company was solvent immediately after the creation of the charge.

Assuming the appointment is in order and that power is granted to carry on the business, the receiver's early duties consist of notifying his appointment to the Registrar of Joint Stock Companies at Bush House, London, and the company whose assets are charged under the debenture.

The usual form of debenture provides that if a Receiver is appointed he shall act as agent of the company in all matters, thus relieving him of personal responsibility, but it is most essential for a receiver to make certain that such clause is contained, otherwise he may be heavily involved personally in certain circumstances.

Every invoice, order, statement, letter or other document, must indicate that a receiver and manager has been appointed, and a receiver should circularise all the creditors, notifying them of his appointment, and that no responsibility can be accepted for orders placed.

A receiver is under obligation to file an abstract of his receipts and payments each six months.

GENERALLY.

I must ask you not to take me to task for failing to include all manner of things known to you, and perhaps to me, which could be rightfully included in an address on the practical duties of trustees, liquidators, and receivers. When I made an inquiry as to which aspect of "Insolvency" your worthy Secretary would like me to talk to you upon, his reply indicated that he wanted "the whole lot." Well, I have attempted the impossible, and none is more conscious of the hopeless failure to do justice to the subject than myself, so I hope it well serve as a warning to others that the subject which covers most aspects of business and private life cannot be dealt with at one bite.

The endeavour I have made is to give you some idea of what happens in practice. Purposely have I avoided what can be read in your text books, and although the whole of what has been said is all so obvious, it is only fair that I should point out some of the things that I have come across in practice, which, since qualified men of both the legal and accountancy professions were involved, emphasise the need to quote the obvious.

EXAMPLES.

(1) *Sole Trader.*—The statement of affairs included no private assets, and neither the accountant nor solicitor thought that the creditors had any right to be told what they were, leave alone claim them.

(2) *Partnership.*—A heated argument ensued between solicitor and creditors' representative whether any surplus on separate estates would be available for the creditors

of the joint estate. No information had been supplied relating to the separate estates, which were large enough to pay the creditors twenty shillings in the pound, and the accountant who had remained silent throughout the argument, and who was subsequently asked his views, admitted that he did not know the answer.

(3) *Bankruptcy.*—The Trustee would not accept the advice gently tendered that he was prohibited from purchasing any of the assets.

(4) *Voluntary Liquidation.*—Both solicitor and accountant were quite sure that the managing director who had a service agreement must be employed by the liquidator upon the terms of that agreement, and that necessarily the business must be carried on until the expiration of such agreement, or, alternatively, the managing director must be paid out in full.

(5) *Liquidation under Supervision of the Court.*—Liquidator astonished that he was reprimanded by the Court for acting outside the authority given him.

(6) *Compulsory Liquidation.*—Liquidator more than surprised that he was taken to task for shutting down a business which possessed a valuable goodwill as a going concern, the asset being thereby lost to the creditors.

(7) *Receivership.*—Receiver astounded that creditors who had refused to supply goods after his appointment, except upon his personal undertaking to pay, were not interested in the fact that the business had continued to lose money, but demanded payment in full of the amount of their accounts.

Finally, I would point out that it was on purpose that I gave you such a simple illustration of a debtor in financial difficulties. I do want to impress upon you that in the larger cases exactly the same principles apply; therefore, if you keep in mind a small case you will not be hopelessly lost merely because you are fortunate enough to come in contact with a very much larger case.

The Incorporated Accountants' Golfing Society.

The 1937 Summer Meeting of the Incorporated Accountants' Golfing Society was held at Woodhall Spa, Lincs., on July 10th and 11th, when twenty-six members and friends were present.

The Saturday morning Medal Competition for Incorporated Accountants resulted in a tie between Mr. F. C. A. Gorst, 91—14=77, and Mr. R. M. Branson, 94—17=77. Mr. F. C. A. Gorst was awarded the prize owing to his having the best score over the last nine holes.

The Saturday afternoon Four Ball Bogey Competition, open to members and visitors, was won by Mr. R. M. Branson and Mr. H. Townsend with the remarkable score of 7 up, the runners-up being Mr. E. R. Inge and Mr. H. Morley with 6 up.

The Sunday morning Medal Competition resulted in a tie between Mr. G. L. Foulds, 91—15=76, Mr. R. J. Mason 83—7=76, and Mr. E. R. Inge 82—6=76. The prize was awarded to Mr. G. L. Foulds owing to his having the best score over the last nine holes. Mr. R. J. Mason was awarded second prize owing to his having the second best score over the last nine holes.

The venue for the meeting for the third year in succession was specially chosen to accommodate members situated in the provinces. The Committee, however, regret that there was such a small attendance, especially after having notified every Branch and District Society.

CLAIM FOR ACCOUNTANT'S CHARGES.

Radford *v.* Mandleberg & Co., Limited.

In the High Court on June 28th judgment was given in an action in which Mr. E. A. Radford, Member of Parliament for Rusholme, claimed £2,200, fees as an accountant, in carrying out in 1935-36 an exhaustive investigation into the management and administration of J. Mandelberg & Co., Ltd., waterproofer weavers and dyers, of Pendleton, Salford, and subsidiary companies. The company contested the claim and pleaded that the charges were excessive and unreasonable. They contended that a fair charge would be about £1,000, which had already been paid.

Mr. C. M. Pitman, K.C., Official Referee, giving judgment for the plaintiff for £2,000, including the money already paid, said the sum claimed was a very large one, but the business of the company was also very large, as there were no fewer than nine separate manufacturing departments, two merchanting departments, three service departments and three accounting departments, and there were five English subsidiary companies, four companies conducting business in Italy, two conducting business in the U.S.A. and one in Canada. The plaintiff decided that it was necessary to go back ten years in his investigation and the accounts for that period showed that from 1925 to 1930 the company was making profits averaging £55,403 per annum, while in the following five years there were losses averaging £7,411 per annum. In those circumstances it was not surprising that the shareholders became restive. At the annual general meeting in May, 1935, the shareholders were up in arms and after much discussion it was decided to appoint an accountant to investigate fully the administration, management and affairs of the company.

Mr. Radford, who was appointed by the Bank, was a man who held a high position in the world of accountancy, and no suggestion had been made against his ability and integrity. It was not even hinted that he deliberately made more than was necessary of his employment to earn high fees and all that was alleged was that his fees were too high and that in excessive zeal he had done more work than was necessary. Mr. Radford decided that he must go back ten years in his investigations, and in his (the Official Referee's) opinion, he was right in coming to that conclusion. He instructed his partner, Mr. Baldwin, to do the spade work, and Mr. Baldwin, who was an extremely able young man, was very thorough in his work.

Mr. Radford in his report laid his finger on what he considered to be the main causes of the disease that had overcome the company, namely, that their charges for their goods were too high and that the remuneration drawn in various ways by the directors was much too high and out of all proportion to the trade being done. The report, a volume of great length and size, was accepted by the directors without comment or complaint and acted on by making drastic revisions in the board's constitution.

It was suggested that a great deal of the report was unnecessary and two eminent accountants were called for the defence, who stated that they would have been contented with much less investigation. But their evidence did not strike him as convincing and the plaintiff was prepared to call an accountant who would say the other thing. It only showed that different people had different ideals as to what was necessary.

In conclusion, the Official Referee said he had come to the following decisions:—

The plaintiff was right in deciding to go back ten years in his investigation.

Having regard to the circumstances under which he was appointed he was justified in investigating all the dealings of all the departments and subsidiary companies.

The report was too prolix, but it was substantially necessary for the plaintiff to narrate all his investigations.

The plaintiff was not entitled to charge in respect of his consultations with the shareholders subsequent to the delivery of his report.

The plaintiff was not entitled to charge separately for the materials used in the making up of the report.

The Official Referee accordingly entered judgment as stated above, with interest and costs.

District Societies of Incorporated Accountants.

BRADFORD.

Annual Report.

The Committee has pleasure in presenting to the members the following report on the work of the Society for the year ended March 31st, 1937 :—

MEMBERSHIP.

There was an aggregate increase during the year of eleven members. Particulars of the membership for the last three years are as follows :—

	1935	1936	1937
Fellows and Associates in practice	100	105	106
Fellows and Associates not in practice	113	118	127
	213	223	233
Students	95	93	94
	308	316	327

LECTURES AND MEETINGS.

The Society held eleven meetings during the session, as follows: —

Inaugural Meeting and Bridge Drive.

"Things Not Found in the Text Books," by Mr. W. H. Stalker, A.S.A.A., F.C.W.A.

Joint Meeting with the Sheffield Students' Society (at Sheffield).

Informal Dinner at the Great Northern Victoria Hotel. "Fixed and Flexible Trusts," by Sir H. Cassie Holden, Bart., K.C., Deputy Chairman of the Association of Fixed and Flexible Trust Managers.

"Important Points in Voluntary Liquidation," by Mr. H. B. Connell, Solicitor.

"The Art of Public Speaking," by Mr. Arthur Duxbury.

"Hire-Purchase Accounts," by Mr. E. Westby Nunn, B.A., LL.B., Barrister-at-Law.

"The Important Claims arising under Schedule D," by Mr. E. H. Johnson, Inspector of Taxes.

"Income Tax with Special Reference to the Provisions of the Finance Act, 1936," by Mr. Victor Walton, F.C.A.

Annual Supper Dance at the Midland Hotel.

"Valuation of Shares," by Mr. W. W. Bigg, F.C.A., F.S.A.A.

Joint Meeting with the Bradford Law Students and the Bradford Chartered Students' Societies, at the Liberal Club.

The inaugural meeting took the form of a whist and bridge drive, which was attended by about twenty members. Refreshments were served by the generosity of the President, Mr. Alton Ward, who, in a few words, invited the co-operation of all members during the session.

An informal dinner was held for the first time on November 17th, at the Great Northern Victoria Hotel. A paper was delivered by Sir H. Cassie Holden, Bart., K.C., on the subject "Fixed and Flexible Trusts." The meeting proved popular, and the Society was pleased to welcome as its guests the Lord Mayor of Bradford and representatives of the business and professional life of the city.

The golf competition was held on June 30th, at the Oakdale Golf Course, Harrogate, and again proved highly successful.

It is desired to record the thanks of the members to Mr. C. L. Townend, who has made a gift to the Society of a silver rose bowl to be played for each year and to be held for one year by the winner of the annual golf competition. On this occasion it was presented to Mr. P. W. Stirk, together with a replica of the trophy given absolutely and presented by Mr. Alton Ward.

EXAMINATION RESULTS.

Congratulations of their fellow-members are accorded to the Students who have been successful in the Society's examinations. Twelve passed the Final and twelve the Intermediate.

Mr. Herbert William Simpson gained first place honours in the Final examination held in May, 1936. It is thought that he is probably the youngest candidate ever to obtain first place in this examination.

OBITUARY.

It is with regret that we record the death on September 3rd of Mr. J. B. Newport, a member of the Society, and a partner in the firm of Messrs. J. H. Haley, Son & Co., of Tyrrel Street, Bradford. Although Mr. Newport did not take a prominent part in the activities of the local Society, he was very highly respected by a large circle.

OTHER SOCIETIES.

During the year the Society was represented by the President at functions of the West Yorkshire Branch of the Chartered Institute of Secretaries, the Bradford and District Auctioneers' and Valuers' Society, the Bradford and District Institute of Insurance Brokers, and the Bradford Chamber of Commerce.

Mr. M. W. Hustwick, A.S.A.A., has been elected Honorary Secretary of the Incorporated Accountants' Bradford and District Society.

The annual golf competition of the Bradford and District Society was held at the Harrogate Golf Club on July 5th.

Twenty-two members entered for the competition. The magnificent silver rose bowl (presented to the District Society for annual competition by Mr. C. L. Townend, of Halifax) was won by Mr. H. Jaques, and a replica of the trophy was presented to him by Mr. G. R. Lawson, President of the District Society. The second prize, a steel shafted golf club, was won by Mr. A. B. Kitchen, and three members who tied for third place were Mr. G. R. Lawson, Mr. Joseph Rhodes and Mr. P. W. Stirk.

CUMBERLAND AND WESTMORLAND.

SUMMER MEETING.

The summer meeting of the Incorporated Accountants' District Society of Cumberland and Westmorland was held at Kendal on July 17th. Mr. Edmund Lund, M.B.E., President of the District Society, was in the chair, and the guests and members included the Deputy Mayor and Mayoress of Kendal (Mr. and Mrs. H. Airey), Mr. Walter Holman (President of the Society of Incorporated Accountants and Auditors) and Mrs. Holman, Mrs. Lund, Mr. P. O'Neill (Chief Constable), Mr. A. A. Garrett, M.B.E., Secretary of the Society, and Mrs. Garrett, Mr. E. J. Williams, F.S.A.A., Carlisle, Mr. R. O. Naylor, F.S.A.A., Kendal, Mr. H. J. Rigg, F.C.A., F.S.A.A., Carlisle, and Mr. T. E. Williams, A.S.A.A., Hon. Secretary.

The CHAIRMAN, in welcoming the members and guests, said it was an auspicious occasion, as their visitors included the recently elected President of the Society of Incorporated Accountants (Mr. Walter Holman), and the Secretary, Mr. Garrett. The civic authorities of Kendal had always taken an interest in their activities. In a district where the members were so scattered it was difficult to arrange regular meetings, but they did all in their power for the students.

Mr. WALTER HOLMAN, replying, said that Cumberland and Westmorland was the playground of England, and playgrounds were necessary in these strenuous days of industry and commerce. He spoke of the value of unity and its advantages to members in isolated districts. It gave a greater sense of security to the individual member, and led to the pooling of ideas. Mr. Holman referred to the successful Incorporated Accountants' Conference in Belfast, and mentioned that within the next two months he expected to attend conferences of accountants in Paris and in the United States of America.

Mr. E. J. Williams (Vice-President of the District Society), thanked the guests for their interest in the work of the District Society.

Mr. H. Airey (Deputy Mayor of Kendal) and Mr. A. A. Garrett replied.

SOUTH OF ENGLAND.

BOURNEMOUTH AND DISTRICT SECTION.

A cricket match was played on June 26th between the Dorchester and Weymouth and the Bournemouth members of the Society. The Bournemouth team won with a score of 80 against their opponents' 79. The Dorchester and Weymouth members entertained the Bournemouth members to tea, and a most enjoyable time was spent by all.

SOUTH WALES AND MONMOUTHSHIRE

CARDIFF STUDENTS' SECTION.

The annual outing of the Cardiff Students, held on June 23rd, comprised a visit to Bristol for the purpose of touring the factory of Messrs. W. D. & H. O. Wills, tobacco manufacturers. A party of nineteen made the journey to Weston-super-Mare by steamer, and thence by motor-coach to Bristol. They were cordially received and conducted around the factory by guides who explained the processes of production. At the conclusion of the tour each member was presented with a souvenir, and the Chairman expressed appreciation and thanks for the privilege afforded.

On the return journey some time was spent at Weston-super-Mare. Mr. D. R. Carston (vice-Chairman) was the winner of an enjoyable competition on the putting green.

ASSENT TO WILL BY SQUEEZING HAND.

Pickerill *v.* Pickerill.

This was an undefended action in the Probate Court in respect of a will dated February 25th, 1930. The case came before the President of the Court, Sir Boyd Merriman, and the will was that of Mrs. Martha Stubbs, who lived with her great-nephew, Mr. Joseph Pickerill, of the School House, Calveley, near Tarporley, Chester.

Mr. Pickerill gave evidence that Mrs. Stubbs had practically lost the use of her right hand. When she was taken ill he called in his family doctor, Dr. R. P. Turner, to attend her.

It was stated that although the will was not actually signed by the testatrix, it was signed by Dr. Turner by her direction and in her presence, and that, it was claimed, constituted valid execution, as the signature was duly witnessed.

Evidence was given that the testatrix had almost lost the use of her right hand, and when she was taken ill she decided to make the will. At her request Dr. Turner read out the contents of the will to her, and asked her to squeeze his hand if she approved it and wanted him to sign it on her behalf. She squeezed his hand accordingly, and two witnesses attested the signature. Mrs. Stubbs died about three weeks later.

It was stated that the will had probably been lost during a sale of furniture.

The President pronounced for the will as contained in the copy

Scottish Notes.

(FROM OUR CORRESPONDENT.)

Avoiding Intestacy

A Highland merchant who died unmarried in 1896 conveyed his whole means and estate to trustees for certain trust purposes therein set forth. The trust purposes, other than the residuary clause thereof, had been carried out many years ago. The final disposal of the residue had not yet been carried out. The residue has to be disposed of for "such charitable and religious purposes as they may deem best."

The case came before the Court recently in an action of multiplepoinding. The next of kin maintained that the bequest was not valid because of its vagueness. In his will the testator had made specific legacies to groups of charitable and religious institutions clearly distinguishing which were plainly charitable and which were plainly religious. Did the phrase "charitable *and* religious" mean that the institutions must have the character of both?

Lord Carmont made findings that the bequesting residue was valid, and that the judicial factor could exercise the power of selection of beneficiaries conferred on the trustees by the will.

Scottish Banks' Services

At the annual meeting of the Institute of Bankers in Scotland, the president, Mr. Andrew Mitchell, general manager of the Clydesdale Bank, Glasgow, suggested that the Scottish banks should, like banks elsewhere, make a charge for keeping accounts and also institute a scale of charges for work in keeping customers' securities.

Unlike the practice of the banks in England and elsewhere, the banks in Scotland made no charge for keeping accounts and he argued that, as—in the case especially of personal accounts—many of these carried only small balances, they were kept at a loss. In the case of business accounts substantial balances were generally kept and commissions on cheques cashed made a substantial contribution to the banks' profits, and he thought the public would welcome the abolition of the commission charge on cheques.

Again the enormous growth in the work undertaken by the banks in the keeping of customers' securities was unprovided for and he considered that the formulation of a proper scale of charges for services rendered in this direction was a matter which should no longer be postponed.

While Scotland justifiably claimed to be the pioneer of a banking system, so well founded that it had been copied alike in England and abroad, we had been singularly slow in adopting modern inventions in the Scottish banks.

Scots *versus* English Legal Procedure

Dangers of making one Act of Parliament applicable to Scotland and England, without taking into account the special procedure applicable to Scotland, have been referred to in this page more than once. Recently cases under the Merchandise Marks Act were tried in the Greenock Sheriff Court.

The charge in one case was that in a sale of butter it was verbally described as Danish, whereas it was Lithuanian, and in the other case butter was verbally described as Danish, whereas it was Finnish. The question was whether, the trade description of the goods being purely a verbal one, the provisions of sect. 2 of the Merchandise Marks Act applied. In other words, could a purely oral description be a false trade description?

It was contended by the prosecutor that the Act applied to verbal statements and that the verbal use of a false trade description was sufficient to satisfy sect. 5 (1) (d).

The Sheriff, following a decision by Lord Wright, held that sect. 2 (2) did not apply to the case of a trade description which was wholly verbal. Sect. 5 (1) (d), he said, meant that the description applied to goods must be eiusdem generis (of the same kind) with the mark, and under sect. 2 (2) the offence consisted of exposing for sale goods to which a false trade description was applied. Sect. 2 (2) dealt with marks, and marks only. In that line of reasoning he was supported by what was said by Lord Wright and he adopted that view. Having come to the conclusion that the sub-section only dealt with goods to which a trade description was applied in a primary sense to that term, namely, by being stamped on the goods or affixed to them by a label, and not to a purely verbal description, the accused, he considered, was entitled to be assoilzied.

He would like to say a word as to the procedure followed in this case. The section in which the procedure was laid down was sect. 6. It laid down a procedure foreign to our law. The statute was a good example of the danger of making one Act of Parliament apply to two countries without taking into account the special procedure applicable to offences in Scotland.

Notes on Legal Cases.

BANKING.

Lloyds Bank, Ltd. v. Bank of America National Trust and Saving Association.

Bills of Lading pledged to secure Advance.

A company pledged bills of lading with the plaintiffs to secure advances. The plaintiffs handed back the bills of lading to the company in exchange for trust receipts by which the company undertook to hold the proceeds of the sale of goods represented by the bills of lading as trustees for the plaintiffs. Instead of then selling the goods and paying the proceeds to the plaintiffs, the company pledged the documents with the defendants to secure advances. Before either the plaintiffs or defendants had been repaid, the company became insolvent. It was admitted that the defendants had acted in good faith.

It was held that the plaintiffs were "owners" within the meaning of the Factors Act, 1889; that the company were mercantile agents in possession of bills of lading with the plaintiffs' consent under section 2 (1) of that Act; and that therefore the pledge by the company to the defendants was valid, and the claim of the plaintiffs to recover the pledged bills or their value, or damages for conversion failed.

(K.B.; (1937), 53 T.L.R. 840.)

COMPANY LAW.

In re Anchor Line (Henderson Brothers), Ltd.

Overdraft secured by Floating Charge.

A floating charge over its undertaking and all its property and assets whatsoever and wheresoever was given by an English registered company to a bank to secure an overdraft. The company, the property of which included heritable as well as movable property in Scotland, was subsequently sold as a going concern and was compulsorily wound up and a liquidator appointed.

It was held that in the distribution of the assets of the company, the proceeds of the sale of all the property of the company expressed to be subject to the floating charge, including the proceeds of the heritable and movable property in Scotland, were payable to the bank in or towards the satisfaction of the moneys secured by the charge. The floating charge—unknown to the law of Scotland—amounted to an agreement to charge the property and assets of the company, and was a valid equitable security according to the law of England. Sect. 270 of the Companies Act, 1929, does not put heritable or other property in Scotland in a different position from property belonging to a company registered in England or in any other country in the world.

(Ch.; (1937), 53 T.L.R. 806.)

EXECUTORSHIP LAW AND TRUSTS.

In re Coller's Deed Trusts: Coller v. Coller.

Deed of Family Arrangement.

Where a deed of family arrangement which creates certain annuities payable out of the income of a trust fund contains a clause disposing of the balance of the income, any arrears of the annuities in any one year are not payable out of the capital of the fund, nor out of the income of the trust fund in any subsequent year.

(C.A.; (1937), 53 T.L.R. 859.)

In re Blake: Berry v. Geen.

Accumulation during Lives of Annuitants.

A testator by his will gave and devised all his property both real and personal to his trustees upon trust to pay out of the income thereof a large number of annuities, some being to certain religious institutions, and he directed that these last annuities should determine on the death of the last of the personal annuitants. He further directed that so long as any of the annuitants were alive, the balance of the income of the residuary estate and the income resulting therefrom should be accumulated and invested, and subject as aforesaid he gave the whole of his property after the death of the last personal annuitant to the Congregational Union of England and Wales to be invested as capital. The secretary of that charity asked for an order that the trust for accumulation should be determined, and that either the surplus income in each year should be paid to the charity or that proper provision should be made for the payment of the annuities, and that subject thereto the residuary estate should be transferred to the charity.

It was held by the Court of Appeal that if any of the annuitants survived the period of twenty-one years from the testator's death, when the accumulations would cease by virtue of sect. 164 of the Law of Property Act, 1925, the surplus income down to the death of the last surviving annuitant would be undisposed of, and would pass as on an intestacy; and that the Court ought not to make the order asked for by the residuary legatees, as the effect of such an order would be to prejudice and possibly defeat altogether the possible interests of the persons taking under an intestacy, and the Court ought never to make such an order if the effect might be to prejudice any interest in any other persons, whether present or future, vested or contingent, without their consent.

(C.A.; (1937), 1 Ch. 325.)